

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dennis E Sparn, Jr.,
Petitioner,

14IWCC0081

vs.

NO: 12 WC 2285

Belleville Area Special Services Cooperative,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of temporary total disability, medical and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 29, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0081

12 WC 2285

Page 2

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

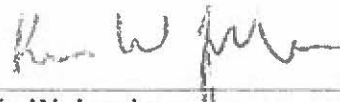
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$21,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 23 2014

KWL/vf

O-1/27/14

42



Kevin W. Lamborn



Daniel R. Donohoo



Thomas J. Tyrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0081

SPARN JR, DNNIS E

Employee/Petitioner

Case# 12WC002285

BELLEVILLE AREA SPEICAL
SERVICES COOPERATIVE

Employer/Respondent

On 8/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0299 KEEFE & DEPAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

0560 WIEDNER & MCAULIFFE LTD
MARY SABATINO
1 N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0081

Dennis E. Sparn, Jr.

Employee/Petitioner

v.

Case # 12 WC 2285

Consolidated cases: ____

Belleville Area Special Services Cooperative

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **7/11/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other ____

FINDINGS

On the date of accident, 8/17/10, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$16,543.46**; the average weekly wage was **\$472.67**.

On the date of accident, Petitioner was **39** years of age, *single* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$25,296.81** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$25,296.81**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall authorize and make payment for medical treatment for the lumbar spine, including, but not limited to, the lumbar surgery recommended by Dr. Gomet.

Respondent shall pay for reasonable and necessary medical services identified in Petitioner's Exhibit 9 as provided in Section 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for amounts paid.

Respondent shall pay Petitioner temporary total disability benefits of **\$315.11/week** for **149-2/7** weeks, commencing **9/1/10** through **7/11/13**, as provided in Section 8(b) of the Act. Respondent shall be given credit for **\$25,296.81** or **79-1/7** weeks in TTD benefits paid.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

8/26/13
Date

AUG 29 2013

FINDINGS OF FACTS

Petitioner, currently 42 years of age, worked for Respondent as an individual care aid, since 2007. The job involved assisting students with multiple disabilities. Prior to August 18, 2010, Petitioner performed all the aspects of his job, including but not limited to lifting students in and out of wheel chairs, frequent bending and lifting and chasing and carrying students. He experienced no low back or lower extremity problems prior to August 18, 2010.

On August 18, 2010, Petitioner worked specifically as an aid for a 260 pound autistic high school student. The job required physical restraints. Petitioner testified the job was as physically demanding as the other work he performed for Respondent. On that date, the student struck Petitioner from behind and drove him across two desks. Petitioner, while lying over a desk, reached around to try and restrain the student. Petitioner testified he developed low back pain with numbness and tingling down the back of his right leg to the foot. Petitioner denied similar symptoms prior to the accident. Petitioner completed accident reports August 18 and August 26, 2010 corroborating the accident and development of symptoms. (Px. 8 at 1-2). At the time of the accident, Petitioner also worked through the State of Illinois assisting an individual with special needs. The tasks included lifting, carrying, bathing and performing other hygiene for the child.

Following the accident, on August 30, 2010, Petitioner came under the care of a pain management physician, Dr. William Thom. He reported severe low back pain radiating down the right leg. (Px. 1 at 2). Petitioner did not show any significant pain behavior. On physical exam, Petitioner had decreased motor strength of 3/5 in the right lower extremity. He could not walk heel to toe. Petitioner had decreased sensation in the L4 and L5 dermatomes. Dr. Thom noted tenderness over the right lumbar paraspinal muscles and facets. (Px. 1 at 4). Dr. Thom ordered x-rays, prescribed Flexeril and placed Petitioner on light duty. (Px. 1 at 5). X-rays of the lumbar spine showed L5 PARS Defect and L5-S1 spondylolisthesis. (Px. 2 at 1). An ultrasound of the SI joints showed joint effusion, left worse than right. (Px. 2 at 3).

Petitioners' symptoms and exam remained unchanged September 13 and 20, 2010. (Px. 1 at 6-13). Dr. Thom ordered a lumbar MRI that Petitioner underwent on September 22, 2010. It confirmed the L5 PARS Defect, L5-S1 spondylolisthesis and moderate to severe L5 nerve root foramen stenosis. (Px. 2 at 6). The EMG/NCS testing on that date was not significant for lumbar radiculopathy. (Px. 2 at 7-9).

Dr. Thom performed lumbar trigger point injections on September 30, 2010. (Px. 1 at 18). Because the symptoms did not significantly improve, Dr. Thom on October 4 and 11, 2010 ordered lumbar injections. (Px. 1 at 23, 27).

Dr. Thom opined the work accident at a minimum aggravated Petitioner's lumbar condition and the need for treatment. (Px. 1 at 27). He opined Petitioner was not malingering and the objective findings and films correlated with his complaints. (Px. 1 at 27). He stated surgery was not warranted at that point, but it could be evaluated in greater extent if conservative measures failed. (Px. 1 at 24).

On November 1, 2010, Dr. Thom performed a second set of trigger point injections. (Px. 1 at 29, 33). Petitioner underwent the first set of epidurals at L4-5 and L5-S1 on November 16, 2010. (Px. 1 at 36). On December 22, 2010, Dr. Thom performed an L5-S1 epidural. (Px. 1 at 42). Dr. Thom on January 25, 2011 performed facet injections at L3-4, L4-5 and L5-S1. (Px. 1 at 49). On February 15, 2011, Petitioner reported continued low back and right lower extremity symptoms. The exam remained unchanged. Dr. Thom recommended a lumbar discogram. (Px. 1 at 56-60). Dr. Thom performed a lumbar discogram on February 23, 2011. (Px. 1 at 61). There was concordant pain at L3-4 and L4-5 and the L5-S1 did not hold the pressure well. (Px. 2 at 10-12). Dr. Thom stated the patient was not anxious and the responses appeared reliable. (Px. 2 at 12-13). The post-discogram CT showed disruption present at L4-5, L5-S1 and S1-S2. (Px. 2 at 14). Dr. Thom on March 16, 2011 offered continued epidurals versus surgical consultation versus spinal cord stimulator. (Px. 1 at 65, 68). Petitioner opted for an injection that Dr. Thom performed at L3-4 on March 23, 2011. On April 13, 2011, Petitioner told Dr. Thom he had significant pain reduction from the injection. (Px. 1 at 69). He also reported the therapy improved his range of motion but not the pain. Dr. Thom raised the possibility of a spinal cord stimulator and increased the Lyrica and Celebrex.

On June 6, 2011, Petitioner saw a surgeon, Dr. Robert Grubb. On exam, Petitioner had a positive straight leg raise at 70 degrees for low back pain. Dr. Grubb recommended a myelogram that Petitioner underwent on June 17, 2011. (Px. 5 at 1-2). Based upon that test and Petitioner's weight, Dr. Grubb did not feel that Petitioner was a surgical candidate at that time but that he should continue weight loss and physical therapy. (Px. 5 at 3).

Petitioner returned to Dr. Thom on August 15, 2011. Dr. Thom opined Petitioner should not return to work in a position that required work involving restraints of students. (Px. 1 at 78-82). He ordered an FCE. For treatment, he agreed Petitioner's weight put him at a disadvantage for surgery and that he should consider a spinal cord stimulator. (Px. 1 at 78, 82). The FCE took place on August 23, 2011. The examiner concluded Petitioner gave good effort and he could not return to his occupation full duty. (Px. 4 at 4). The examiner noted some submaximal effort with dexterity testing, but opined that was not related to the injury and most likely due to deconditioning. (Px. 4 at 2). On September 15, 2011, Dr. Thom, after reviewing the FCE, placed permanent restrictions of no lifting, pulling or pushing greater than 50 pounds, frequent rest breaks and sit/stand as needed. He noted Petitioner was painful for days afterward the FCE, suggesting an aggravation of pain with attempts at maximal effort. Dr. Thom stated Petitioner would likely require permanent medications. He again suggested a trial for the spinal cord stimulator in light of Petitioner's weight. (Px. 1 at 83)

Petitioner returned to Dr. Grubb September 26, 2011, who opined the trial spinal cord stimulator was reasonable. (Px. 5 at 4).

Petitioner saw Dr. Thom three more times October 13, 2011, November 14, 2011 and January 30, 2012 while awaiting approval of the temporary stimulator. (Px. 1 at 88, 94, 99). Petitioner testified Respondent never approved the stimulator or provided an explanation for not approving it. By the last visit, Petitioner reported increased symptoms since formal therapy stopped. Petitioner was performing his home exercise program. (Px. 1 at 99). On February 13, 2012, Dr. Thom referred Petitioner to Dr. Gornet. (Px. 1 at 103).

Dennis E. Sparn, Jr. v. Belleville Area Special Cooperative (BASSC)

Case No. 12 WC 2285

Attachment to Arbitration Decision

Page 3 of 5

Petitioner told Dr. Gornet that he had low back, right buttock, groin and thigh pain along with right great toe numbness. On physical exam he had decreased EHL function and ankle dorsiflexion at 4/5. Straight leg raises were provocative for right buttock and leg pain at 45 degrees. (Px. 6 at 1). Dr. Gornet reviewed x-rays, the 6/17/11 CT myelogram and 2/23/11 discogram films. (Px. 6 at 2). Dr. Gornet diagnosed symptomatic L5-S1 spondylolithesis, discogenic L4-5 pain and possible L3-4 disc injury. (Px. 7 at 10). He ordered a lumbar MRI. (Px 6 at 2).

On February 28, 2012, Respondent had Petitioner examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. Dr. Kitchens opined Petitioners' symptoms were related to his obesity, degenerative disc disease and spondylolithesis. He opined Petitioner's current symptoms were not work related and Petitioner could work full duty. He agreed testing and treatment to date had been reasonable, necessary and causally related to the accident. (Rx. 3). Respondent terminated temporary total disability benefits following the IME.

An April 16, 2012 MRI showed the L5 PARS Defect, L5-S1 posterior disc bulge, annular tear and several foraminal encroachment, L4-5 annular tear and L3-4 annular tear. (Px. 6 at 4). Dr. Gornet opined the results were similar to the September 22, 2010 films. He recommended surgery, pending weight loss, and causally connected the need for it to the work accident. (Px. 6 at 5).

On July 16, 2012, Petitioner weighed 328 pounds. He weighed 334 pounds on October 15, 2012. Petitioner testified he ate poorly when his TTD benefits stopped. By February 11, 2013, he weighed 321 pounds. By May 16, 2013, he weighed 304 pounds. Petitioner testified as of trial he weighed 298 pounds, two pounds less than the target weight for surgery. Petitioner testified he ate healthier when he received food stamps.

Petitioner currently experiences low back pain radiating down the right upper extremity. He wants to undergo the surgery proposed by Dr. Gornet so he can return to work for Respondent or get a nursing job. Petitioner took nursing classes since he has been off work because he did not find other work within his restrictions.

Petitioner deposed Dr. Gornet August 30, 2012. Dr. Gornet testified Petitioner's physical exam finding of decreased EHL function at 4/5 was classic L5 radiculopathy. (Px. 7 at 7-8). He diagnosed symptomatic L5-S1 spondylolithesis, discogenic L4-5 pain and possible L3-4 disc injury. (Px. 7 at 10). He opined the current diagnoses were related to the work accident. (Px. 7 at 10). He recommended a new lumbar MRI because the first was not completely diagnostic. (Px. 7 at 11). He reviewed the April 16, 2012 MRI and interpreted L5-S1 right foraminal stenosis and L4-5 disc herniations. (Px. 7 at 11-12). He recommended, pending weight loss and decreased abdominal size, an L4-5 disc replacement and L5-S1 fusion. (Px. 7 at 12-14). He causally connected the need for surgery to the work accident because it aggravated a preexisting asymptomatic condition as well produced new structural disc injuries at L4-5 and L5-S1. (Px. 7 at 14). He has successfully operated on patients larger than Petitioner and felt Petitioner was motivated to lose weight. (Px. 7 at 15-16). On cross examination, Dr. Gornet explained the need for surgery is work related because the accident made the L4-5 and L5-S1 symptomatic. (Px. 7 at 23-24).

Respondent deposed Dr. Kitchens on October 23, 2012. Dr. Kitchens diagnosed lumbar degenerative disc disease, lumbarized sacral spine, spondylolithesis and obesity. (Rx. 3 at 10-11). He opined the diagnoses were not caused, aggravated, accelerated or exacerbated by the accident. (Rx. 3 at 12). He opined Petitioner did not need treatment related to the accident because he did not have lumbar radiculopathy. (Rx. 3 at 15). On cross examination, he admitted the testing and treatment up to his exam was reasonable, necessary and causally related to the accident. (Rx. 3 at 25). He refused to opine the surgery proposed by Dr. Gornet was unreasonable or unnecessary. (Rx. 3 at 38-39).

CONCLUSIONS OF LAW

1. Regarding the issue of causation, Petitioner has met his burden of proof. Petitioner has proven a medical causal relationship exists between his current lumbar condition and the August 17, 2010 work accident. In support of the conclusion, the arbitrator relies on the Petitioner's un rebutted testimony and the medical evidence. Prior to the work accident, Petitioner suffered from degenerative disc disease, L5 PARS defect, L5-S1 spondylolisthesis, and obesity. However, the conditions did not produce lumbar and right lower extremity symptoms. Petitioner's testimony supports he had no prior back problems in that he worked full duty in a heavy physical position for Respondent since 2007. The work accident at a minimum aggravated his lumbar condition resulting in low back pain and right lower extremity symptoms. The symptoms have not resolved. This is supported by medical records and Petitioner's credible testimony. Lastly, the opinions of Dr. Gornet and Dr. Thom are more credible than the opinion of Dr. Kitchens because they treated Petitioner on multiple occasions and the opinions are consistent with the chronology of events. Dr. Gornet, unlike Dr. Kitchens, reviewed all the diagnostic films and medical records.

2. Respondent is ordered to approve the surgery proposed by Dr. Gornet because it is reasonable, necessary and causally related to the accident. In support of the conclusion, the arbitrator relies on the Petitioner's treating medical records. Petitioner has objective findings on the imaging studies and physical exam findings by Dr. Gornet and Dr. Thom to support the disc injuries at L4-5 and L5-S1. He attempted conservative measures, but remains sufficiently symptomatic that he cannot return to his pre-injury classification. Further, the opinion of Dr. Gornet is more credible than the opinion of Dr. Kitchens. Dr. Gornet reviewed all the imaging studies and opined surgery is reasonable and necessary once Petitioner lost necessary weight. Petitioner reached his target weight. Dr. Kitchens could not opine the surgery proposed by Dr. Gornet is unreasonable and unnecessary, only that he would not do it. While Dr. Thom and Dr. Grubb did not recommend surgery, the recommendations were based in part on Petitioner's weight. Petitioner has lost the weight as recommended by Dr. Gornet in order to proceed with surgery.

3. Petitioner is entitled to TTD benefits from September 1, 2010 through July 11, 2013. In support of this conclusion, the arbitrator notes that Respondent terminated benefits on February 28, 2012 based upon the opinion of Dr. Kitchens that Petitioner could work full duty. The opinions of Dr. Thom and Dr. Gornet that Petitioner required restrictions related to the accident are more credible than the opinion of Dr. Kitchens. Respondent is entitled to credit for TTD benefits paid.

14IWC0081

Dennis E. Sparn, Jr. v. Belleville Area Special Cooperative (BASSC)

Case No. 12 WC 2285

Attachment to Arbitration Decision

Page 5 of 5

4. Petitioner is awarded medical expenses in Petitioner's Exhibit 9, subject to the medical fee schedule. This decision is based on the finding that the need for the treatment from Dr. Gornet and Dr. Thom is reasonable, necessary and causally related to the work accident. Respondent is entitled to credit for any medical expenses it has already paid.

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Julius Encarnacion,

Petitioner,

vs.

14IWCC0082

NO: 10 WC 42530

State of Illinois, Department of Corrections,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 16, 2013 is hereby affirmed and adopted.


IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: FEB 03 2014

DRD:bjg
 0-1/23/2014
 68


 Daniel R. Donohoo


 David Gore


 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0082

ENCARNACION, JULIUS

Employee/Petitioner

Case# 10WC042530

10WC004178

ILLINOIS DEPT OF CORRECTIONS

Employer/Respondent

On 7/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
TYLER BARBERICH
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

5165 ASSISTANT ATTORNEY GENERAL
JEANNINE SIMS
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 205 ILCS 405/14

JUL 16 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Will)

14111CC0082

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Julius Encarnacion

Employee/Petitioner

v.

Illinois Department of Corrections

Employer/Respondent

Case # **10 WC 42530**

Consolidated cases: **10WC4178**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **March 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **September 14, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$57,199.05**; the average weekly wage was **\$1,099.98**.

On the date of accident, Petitioner was **49** years of age, *married* with **1** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$1,964.68** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$1,964.68**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

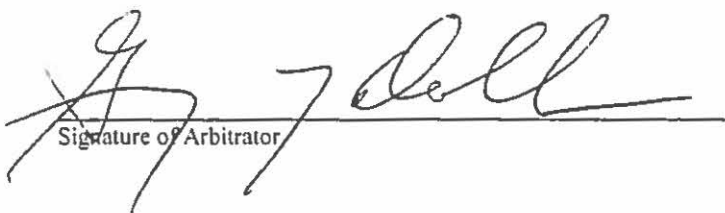
Respondent shall pay Petitioner temporary total disability benefits of \$733.32/week for 2.72 weeks, commencing September 22, 2010 through October 10, 2010, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of \$324.97, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$659.99/week for 25 weeks, because the injuries sustained caused the 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator


Date

JUL 16 2013

Attachment to Arbitrator Decision
(10 WC 42530)

STATEMENT OF FACTS:

On September 14, 2010, Petitioner, Julius Encarnacion was employed as a tool and toxics control officer by Respondent, the Illinois Department of Corrections. The parties agree that on that date, Petitioner sustained an accident that arose out of and in the course of his employment by Respondent.

As part of his job duties, Petitioner was tasked with delivering chemicals from storage to various departments within Stateville Correctional Center. On September 14, 2010, Petitioner was making a delivery to the kitchen area of Stateville. When he arrived in the kitchen, Petitioner began looking for another employee who he had determined was in the dining hall. The door between the dining hall and the kitchen was heavy and made of steel. While Petitioner was standing near the door, an inmate opened the door which struck Petitioner in the head. After being struck, Petitioner blacked out and awoke in an ambulance on the way to the hospital.

Petitioner was taken via ambulance to Provena St. Joseph Medical Center. The emergency room records from Provena indicate that Petitioner had been struck in the head by a very heavy steel door. Petitioner underwent a CT scan of the brain, x-rays of the cervical spine and an ECG, which were all normal. Petitioner was diagnosed with a head injury, concussion and subdural hematoma. (PX 2).

On September 16, 2010, Petitioner followed up with Optima Medical Associates ("Optima"). At that time, Petitioner complained of left sided headaches. Due to the continuing complaints of pain, an orbital x-ray was performed which came back negative. Petitioner was again diagnosed with a concussion and was given medication for his headaches. (PX 1).

On September 20, 2010, Petitioner was seen again at Optima. Petitioner complained of headache over his left orbital area, light headedness and loss of balance. Petitioner was diagnosed with concussion with loss of consciousness, residual headache and altered balance. (PX 1).

Petitioner followed up at Optima on September 23, 2010. At that time, Petitioner was still having headaches despite the pain medication. It was also indicated that Petitioner had called the Optima medical benefit center but had no memory of doing so. An MRI was ordered due to persistent headache and an episode of amnesia. (PX 1).

On October 4, 2010, Petitioner underwent a MRI of the brain, the results of which were unremarkable. (PX 1).

Petitioner testified that he returned to work on October 11, 2010.

The parties in this claim agreed that Petitioner was temporarily and totally disabled from September 22, 2010 through October 10, 2010.

On November 9, 2010, Petitioner followed up at Optima. There it was noted that Petitioner had persistent, daily headaches and left ear pain. Petitioner was diagnosed with balance abnormality and chronic headaches. Petitioner was cleared to return to work at that time with no limitations. (PX 1).

Petitioner sought no further medical treatment for his head after November 9, 2010.

At trial, Petitioner testified that he continued to experience headaches for approximately one year after the accident. Petitioner stopped taking medication for his head approximately six months after his last appointment with Optima.

On the issue of the petitioner's average weekly wage, (G), the Arbitrator finds as follows:

The Arbitrator has reviewed Petitioner's pay records, as contained in Respondent's Exhibit 3 and has calculated Petitioner's average weekly wage as follows:

<u>Period Ending</u>	<u>Gross</u>	<u>OT Premium</u>	<u>Weeks</u>	<u>Wage</u>
9/16/2009	\$2,342.50	\$0.00		\$2,342.50
10/1/2009	\$2,342.50	\$0.00		\$2,342.50
10/16/2009	\$3,892.36	\$1,541.31		\$2,351.05
11/1/2009	\$2,342.50	\$0.00		\$2,342.50
11/16/2009	\$2,342.50	\$0.00		\$2,342.50
12/1/2009	\$3,268.72	\$926.22		\$2,342.50
12/16/2009	\$6,068.92	\$3,726.42		\$2,342.50
1/1/2010	\$3,311.64	\$922.64		\$2,389.00
1/16/2010	\$2,389.00	\$0.00		\$2,389.00
2/1/2010	\$2,389.00	\$0.00		\$2,389.00
2/16/2010	\$2,171.82	\$0.00		\$2,171.82
3/1/2010	\$2,389.00	\$0.00		\$2,389.00
3/16/2010	\$3,528.82	\$922.64		\$2,606.18
4/1/2010	\$3,344.59	\$955.59		\$2,389.00
4/16/2010	\$2,718.51	\$329.51		\$2,389.00
5/1/2010	\$3,311.64	\$922.64		\$2,389.00
5/16/2010	\$3,048.03	\$659.03		\$2,389.00
6/1/2010	\$2,974.80	\$585.80		\$2,389.00
6/16/2010	\$5,003.13	\$2,614.13		\$2,389.00
7/1/2010	\$3,406.09	\$981.09		\$2,425.00
7/16/2010	\$4,097.31	\$1,672.31		\$2,425.00
8/1/2010	\$4,008.12	\$1,583.12		\$2,425.00
8/16/2010	\$2,659.12	\$234.12		\$2,425.00
9/1/2010	\$2,670.27	\$245.27		\$2,425.00
Totals	\$76,020.89	\$18,821.84	52.00	\$57,199.05

Days in Pay Period:	15-16
Normal Hours Per	
Day:	8.00
Days per Week:	5.00

TOTAL EARNINGS UNDER	
SECTION 10:	\$57,199.05
NUMBER OF WEEKS AND PARTS THEREOF	
WORKED:	52.00
SECTION 10 AVERAGE WEEKLY	
WAGE:	\$1,099.98
TEMPORARY TOTAL DISABILITY	
RATE:	\$733.32

Based upon the above calculations, the Arbitrator hereby finds that Petitioner's average weekly wage was \$1,099.98 pursuant to Section 10 of the Act.

On the issue of unpaid medical bills, (J), the Arbitrator finds as follows:

Prior to hearing in this case, the parties agreed that actual the amount of outstanding bills for each of Petitioner's consolidated claims would be agreed to by the parties and only the outstanding amount of medical would be requested by Petitioner. The parties have each submitted that a total of \$324.97 in medical bills remains outstanding related to this claim.

The arbitrator hereby finds that there is no basis for dispute as to the causal relationship or reasonableness and necessity of the medical bills presented by Petitioner in this matter. Therefore, the Arbitrator hereby orders Respondent to pay unpaid medical bills as follows:

The Arbitrator has examined the bills entered into evidence as Petitioner's Exhibit 6 and has found the following unpaid bills to be causally related to Petitioner's May 5, 2009 work accident:

<u>Provider</u>	<u>Beginning</u>	<u>Ending</u>	<u>Total Charges</u>	<u>WC Paid</u>	<u>Balance</u>
Provena Health	9/14/2010	9/14/2010	\$324.97	\$0.00	\$324.97
Balance			\$775.72	\$0.00	\$324.97

Therefore, the Arbitrator hereby orders Respondent to pay reasonable and necessary medical services of \$324.97, as provided in Sections 8(a) and 8.2 of the Act.

On the issue of the nature and extent of Petitioner's injury, (L), the Arbitrator finds as follows:

Petitioner in this matter suffered an acute head injury with loss of consciousness, causing a concussion, a subdural hematoma, impaired balance and persistent headaches. Petitioner's impaired balance lasted at least through his November 2010 treatment with Optima. Petitioner's headaches lasted for approximately one year after the accident.

Based upon the un rebutted testimony of Petitioner concerning his condition and the medical records entered into evidence in this case, the Arbitrator hereby finds that Petitioner sustained a loss of use of 5% of the person

as a whole and orders Respondent to pay petitioner \$659.99 per week for 25 weeks pursuant to Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Julius Encarnacion,
 Petitioner,

14IWCC0083

vs.

NO: 10 WC 4178

State of Illinois, Department of Corrections,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 16, 2013 is hereby affirmed and adopted.


IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: FEB 03 2014

DRD:bjg
 0-1/23/2014
 068


 Daniel R. Donohoo


 David E. Gore


 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0083

ENCARNACION, JULIUS

Employee/Petitioner

Case# 10WC004178

10WC042530

ILLINOIS DEPT OF CORRECTIONS

Employer/Respondent

On 7/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
TYLER BERBERICH
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

5165 ASSISTANT ATTORNEY GENERAL
JEANNINE SIMS
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 16 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Will)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

14IWCC0083

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Julius Encarnacion

Employee/Petitioner

v.

Illinois Department of Corrections

Employer/Respondent

Case # **10 WC 4178**

Consolidated cases: **10WC42530**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **March 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On **May 5, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$57,774.60**; the average weekly wage was **\$1,111.05**.

On the date of accident, Petitioner was **47** years of age, *married* with **1** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$1,293.56** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$1,293.56**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

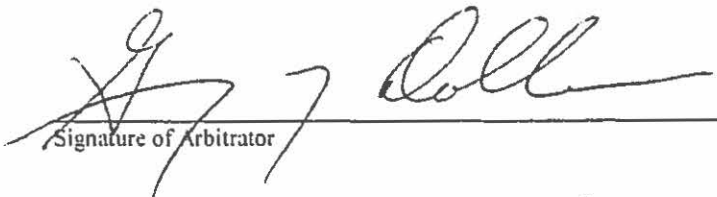
Respondent shall be given a credit of **\$1,293.56** for TTD, **\$0** for TPD, and **\$0** for maintenance benefits, for a total credit of **\$1,293.56**.

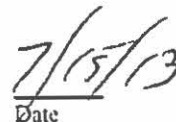
Respondent shall pay Petitioner temporary total disability benefits of **\$740.70/week** for **2.86** weeks, commencing **June 3, 2009** through **June 22, 2009**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$664.72/week** for **15.375** weeks, because the injuries sustained caused the **7.5%** loss of the Left Hand, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator


Date

JUL 16 2013

Attachment to Arbitrator Decision
(10 WC 4178)

STATEMENT OF FACTS:

On May 5, 2009, Petitioner, Julius Encarnacion was employed as a tool and toxics control officer by Respondent, the Illinois Department of Corrections.

Petitioner was employed by Respondent at Stateville Penitentiary. As a tool and toxics control officer, Petitioner's job primarily involved maintaining the facility's tools, which included the task of etching and engraving reference numbers into each new tool that the facility received. Prior to May 5, 2009, Petitioner testified that multiple facilities in the state corrections system had recently closed and the tools had all been transferred to Stateville, where Petitioner was tasked with engraving each new tool. Each department within Stateville had their own set of tools, which could number above 100 tools per department. Petitioner testified that there were many departments within Stateville for which tools were engraved, including carpenters, plumbers, electricians, refrigeration, motor pool and dietary.

Petitioner explained that while etching and engraving tools, he would hold each tool in his left hand and use an electric etcher with his right hand. The etcher vibrated "a lot." Petitioner felt the vibration from the etcher in both hands, causing his hands to shake during the engraving process. The vibration was caused by the metal tip of the engraver striking the metal tool. While engraving the tools, Petitioner would twist his left wrist to allow him to engrave each side of the tool. Each individual tool that Petitioner engraved would take anywhere from 10 to 15 minutes to complete and Petitioner would engrave approximately 50 to 100 tools per day.

Petitioner testified that as of May 5, 2009, he had personally completed the engravings on approximately 70% of the tools received during the facilities transition.

In addition to maintaining tools, Petitioner's job also involved delivering tools and various chemicals to anywhere in the facility that required them. Petitioner testified that for tool and chemical deliveries, he would come in and out of the tool control office many times per day. The door to the tool control office was made from steel. In order to open the door, Petitioner would use his left hand to turn a large Folger Adams key in the door and pull the door open in the same motion. Petitioner explained that he always used his left hand to open the door because he kept his radio on his right side and his keys on his left.

On May 5, 2009, Petitioner testified that he was going to open the steel door to the tool control office when he experienced numbness and tingling in his left hand. Petitioner also noticed that there was a lump in his left wrist at that time. Petitioner had never experienced numbness or tingling in his left hand or noticed a lump in his left wrist prior to May 5, 2009.

Petitioner immediately reported his injury to his superior, Major Torri, and was sent home from work.

On May 6, 2009, Petitioner was seen at The Optima Medical Associates by Dr. Brian Ragona who diagnosed a ganglion cyst of the left wrist and advised Petitioner to follow up with a hand specialist. (PX 1).

On May 8, 2009, Petitioner was seen by Dr. Alan Chen who noted the painful lump in Petitioner's left wrist. Petitioner testified that he was experiencing tingling and numbness in the left hand when he sought care with Dr. Chen. Dr. Chen diagnosed a left wrist ganglion cyst and recommended a surgical excision of the cyst. (PX 3).

On May 15, 2009, Dr. Chen drafted a correspondence in which he noted Petitioner's left wrist mass and discomfort. At that time, the mass had grown on the volar aspect of Petitioner's left wrist. Dr. Chen stated that although Petitioner did not have a specific injury, he often used his left wrist with significant force when closing prison doors, which were extraordinarily heavy. (PX 3). Dr. Chen again recommended excision of the cyst due to continued discomfort by Petitioner.

After seeing Dr. Chen on May 15, 2009, Petitioner reported the accident and his diagnosis to Respondent. Petitioner filled out an accident report, contained in Petitioner's Exhibit 5, in which Petitioner detailed that he was performing tool control at the time of his accident and that his accident occurred due to repetitive motion. (PX 5).

On June 1, 2009, a CMS medical report was filled out by Mary Kronenburger, a nurse practitioner from Optima Medical Associates, who noted that as of June 1, 2009, the mass on Petitioner's wrist had increased in size and that Petitioner required surgical excision of the cyst. (RX 4).

On June 2, 2009, Petitioner followed up with Optima Medical Associates. On that date, it was noted that Petitioner complained of numbness in the left thumb and had a ganglion cyst of the left radial area of the wrist. Petitioner was placed on an off work status until surgery was scheduled. It was specifically noted that Petitioner could not use his left hand due to neuropathy and that it would cause an unsafe condition at work. (PX 1).

Petitioner testified that he began off work as of June 2, 2009. However, on June 3, 2009 Petitioner signed a temporary total disability (TTD) request, stating that he requested TTD benefits beginning on June 10, 2009. (RX 4). At trial, Petitioner did not recall the details surrounding his signing of the TTD request, he testified that he "just signed it." Petitioner further testified that each time he received a work status report, including when he received the work status report on June 2, 2009 from Optima, he took it to Kenneth from Stateville, who is the other individual who signed Petitioner's TTD request form.

On June 12, 2009, Petitioner underwent a surgical excision of a left wrist ganglion cyst, performed by Dr. Chen. (PX 3).

Following surgery, Petitioner continued to follow up with Dr. Chen. On June 22, 2009, Petitioner was released by Dr. Chen to return to work at full duty as of June 23, 2009. Petitioner testified at trial that he did in fact return to work on June 23, 2009.

On July 27, 2009, Dr. Chen drafted correspondence to Respondent indicating the course of treatment Petitioner had undergone and that he was clear to work without restriction. (PX 3). Petitioner has received no further treatment for his left hand or wrist since July 27, 2009.

On March 2, 2011, Petitioner's medical records were reviewed by Dr. Jeffrey Coe. Dr. Coe testified in this matter on December 5, 2011. Dr. Coe is a board certified specialist in occupational medicine. (PX 7 @ 3). Dr. Coe reviewed all of Petitioner's medical records from March of 2009 through his release from medical care. (PX 7 @ 5). Dr. Coe noted Petitioner's job duties, including engraving with an engraving tool and opening and closing cell doors. (PX 7 @ 6). Based upon Petitioner's treatment records, comments within those records regarding the nature of Petitioner's work, and the development of Petitioner's left wrist condition, Dr. Coe opined that there was a causal relationship between Petitioner's work activities and the left wrist ganglion cyst, which required surgical excision. (PX 7 @ 10-11). Dr. Coe opined that Petitioner's work activities aggravated the breakdown at the tendon sheath of the left wrist, causing the development of the cyst. (PX 7 @ 11). He explained that the forceful repetitive gripping and performing fine movements while gripping, are the types of stressful activities that can cause or contribute to the breakdown in the tendon sheath and the development of the ganglion cyst that Petitioner began to note in May of 2009. These are also the types of work activities that Petitioner described to Dr. Chen on May 8, 2009, including repetitive forceful gripping to open and close heavy cell doors and engraving using an engraving tool. (PX 7 @ 12). Dr. Coe further testified that all medical treatment he had reviewed had been reasonable and necessary. (PX 7 @ 11-12).

On cross-examination, Dr. Coe testified that it is standard medical teaching in occupational medicine that work factors may be a cause of a ganglion cyst; either directly causing the cyst or aggravating a preexisting cyst and rendering it symptomatic. (PX 7 @ 14). Dr. Coe testified that he did not know how heavy exactly the door that Petitioner had to open and close was, nor how often he had to perform that task. However, Dr. Coe has seen other prison employees over the years and has learned that the prison doors are heavy, weighing more than a hundred pounds. (PX 7 @ 15). Dr. Coe's understanding of Petitioner's engraving duties was that he used a vibrating engraving tool and gripped it forcefully. (PX 7 @ 18).

On August 29, 2012, Petitioner underwent a Section 12 examination with Dr. James Williams. The doctor noted in his report that Petitioner was employed in tools and toxics for Stateville Correctional Center. Dr. Williams noted that Petitioner's employment involved stocking and lifting, as well as using his left hand to open his steel office door. Dr. Williams reviewed a job description provided by Respondent, which by Dr. William's description appears to be the same job description as contained in Petitioner's Exhibit 4. Petitioner also informed Dr. Williams that he engraved tools as part of his job. Dr. Williams stated that Petitioner did not suffer any acute injury and that he did not complain of any symptoms whatsoever at the time of the examination. In contrast to Dr. William's statement, Petitioner testified at hearing that he did tell Dr. Williams that he was experiencing numbness in his left hand. After reviewing records and examining Petitioner, Dr. Williams opined that the ganglion cyst was not causally related to his work duties. He stated that "I do not believe that patient's job duties, being that of turning keys or of closing prison doors, would have resulted in any ganglion cyst." Dr. Williams further opined that all care and treatment had been reasonable and necessary, but he did not believe it was related to any work accident. (RX 17). Dr. Williams was not deposed in this matter.

At trial, Petitioner testified concerning the current condition of his left wrist and hand. He stated that when the palm of his left hand is touched, he experiences tingling in the left and, up into his fingers. He explained that

although surgery helped him a lot, his left hand still feels very different than his right hand. Petitioner has experienced tingling in his left hand since May 5, 2009.

On the issues of whether an accident occurred that arose out of and in the course of Petitioner's employment with respondent, (C), and whether Petitioner's current condition of ill being is causally related to his work accident, (F), the Arbitrator finds as follows:

After reviewing all evidence and testimony in this matter, the Arbitrator hereby finds that Petitioner did sustain an accident that arose out of and in the course of his employment by Respondent on May 5, 2009 and that the current condition of ill-being in Petitioner's left wrist and hand is causally related to his May 5, 2009 work accident.

Although Petitioner did not sustain an acute trauma to his left wrist, the repetitive nature of his duties caused the development of a ganglion cyst which required surgical excision. At trial, Petitioner testified to the repetitive work he performed for Respondent. It was undisputed by Respondent that as of May 5, 2009, Petitioner had personally engraved new identification numbers onto 70% of the hundreds of tools transferred from other state facilities to Stateville in early 2009. While etching and engraving each tool, Petitioner explained that he would hold the tools in his left hand while he used an electric etcher with his right hand. The vibration from the etcher shook both of Petitioner's hands. Each of the hundreds of tools engraved by Petitioner would take anywhere from 10 to 15 minutes to complete. In addition, Petitioner would twist his left wrist during the engraving process to allow him to engrave each side of the tool. In addition to engraving tools, Petitioner would repeatedly enter an exit a steel door, using his left hand to twist a large key in the door and pull the door open.

Respondent in this case offered no evidence or testimony to dispute the job duties described by Petitioner. The job description produced by Respondent indicates that Petitioner's duties required the "use of hands for gross manipulation (grasping, twisting, handling)" for 6-8 hours per day and required the "use of hands for fine manipulation (typing, good finger dexterity)" for 2-4 hours per day. (PX 4).

During his deposition testimony in this matter, Dr. Coe opined that Petitioner's work activities aggravated the breakdown at the tendon sheath of the left wrist, causing the development of the cyst. (PX 7 @ 11). He explained that forceful repetitive gripping performing fine movements while gripping are the types of stressful activities that can cause or contribute to the breakdown in the tendon sheath and the development of the ganglion cyst that Petitioner began to note in May of 2009. These are also the types of work activities that Petitioner described to Dr. Chen on May 8, 2009, including repetitive forceful gripping to open and close heavy cell doors and engraving using an engraving tool. (PX 7 @ 12). Dr. Coe further testified that it is standard medical teaching in occupational medicine that work factors may be a cause of ganglion cyst; either directly causing the cyst or aggravating a preexisting cyst and rendering it symptomatic. (PX 7 @ 14).

Respondent in this case relies on the IME report of Dr. Williams who opined that Petitioner's cyst was not caused by his work duties. (RX 17). The Arbitrator is not persuaded by the opinion of Dr. Williams. The Arbitrator notes it appears the doctor ignored the details of Petitioner's work duties in coming to that conclusion. Although Dr. Williams notes that Petitioner's job included engraving tools and although he reviewed the Stateville job description that shows Petitioner performed gross manipulation for 6-8 hours per day and fine manipulation for 2-4 hours per day, Dr. Williams simply concluded, "I do not believe that patient's job duties, being that or turning keys or of closing prison doors, would have resulted in any ganglion cyst."

(RX 17). It is clear from the records in this case, along with Petitioner's undisputed testimony, that Petitioner's job duties included far more than turning keys and closing prison doors. It appears Dr. Williams, disregarded pertinent facts, specifically the extent of tool use and engraving performed by Petitioner, rendering his opinion unreliable.

Therefore, after reviewing all records and testimony in this case, the Arbitrator finds that the opinion of Dr. Coe is more persuasive than the opinion of Dr. Williams and adopts the opinion of Dr. Coe regarding causation.

The Arbitrator further finds that Petitioner's accident in this matter did occur on May 5, 2009. The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury manifests itself. *Peoria County Belwood Nursing Home v. Industrial Commisison*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). The manifestation of a repetitive trauma injury occurs when the fact of injury and its causal relationship to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2006).

The un rebutted testimony of Petitioner was that he had never noticed the lump in his left wrist until May 5, 2009, nor had he ever experienced pain in his left wrist until he was opening the steel office door on May 5, 2009. Petitioner then immediately reported his accident and injury to his supervisor. Based on this information, it is apparent that Petitioner's injury manifested itself to him on May 5, 2009.

On the issue of Petitioner's earnings, (G), the Arbitrator finds as follows:

The Arbitrator has reviewed Petitioner's pay records as contained in Respondent's Exhibit 3 and has calculated Petitioner's average weekly wage as follows:

Period Ending	Gross	OT		Wage
		Premium	Weeks	
5/16/2008	\$3,725.08	\$1,242.90		\$2,482.18
6/1/2008	\$4,200.54	\$1,760.78		\$2,439.76
6/16/2008	\$4,689.97	\$2,437.47		\$2,252.50
7/1/2008	\$2,252.50	\$0.00		\$2,252.50
7/16/2008	\$3,859.15	\$1,450.05		\$2,409.10
8/1/2008	\$3,391.83	\$1,139.33		\$2,252.50
8/16/2008	\$4,427.58	\$2,175.08		\$2,252.50
9/1/2008	\$4,116.83	\$1,553.63		\$2,563.20
9/16/2008	\$4,124.99	\$1,864.35		\$2,260.64
10/1/2008	\$4,738.30	\$2,485.80		\$2,252.50
10/16/2008	\$4,738.30	\$2,485.80		\$2,252.50
11/1/2008	\$3,226.11	\$973.61		\$2,252.50
11/16/2008	\$3,806.01	\$310.73		\$3,495.28
12/1/2008	\$3,806.13	\$1,553.63		\$2,252.50
12/16/2008	\$3,702.47	\$621.45		\$3,081.02
1/1/2009	\$2,317.29	\$0.00		\$2,317.29
1/16/2009	\$3,229.72	\$946.01		\$2,283.71
2/1/2009	\$4,178.03	\$1,892.03		\$2,286.00

2/16/2009	\$3,757.55	\$1,051.13		\$2,706.42
3/1/2009	\$2,916.68	\$630.68		\$2,286.00
3/16/2009	\$2,580.32	\$294.32		\$2,286.00
4/1/2009	\$2,874.63	\$588.63		\$2,286.00
4/16/2009	\$2,286.00	\$0.00		\$2,286.00
5/1/2009	\$2,601.34	\$315.34		\$2,286.00
Totals	\$85,547.35	\$27,772.75	52.00	\$57,774.60

Days in Pay	
Period:	15-16
Normal Hours Per	
Day:	8.00
Days per Week:	5.00

TOTAL EARNINGS UNDER	
SECTION 10:	\$57,774.60
NUMBER OF WEEKS AND PARTS THEREOF	
WORKED:	52.00
SECTION 10 AVERAGE WEEKLY	
WAGE:	\$1,111.05
TEMPORARY TOTAL DISABILITY	
RATE:	\$740.70

Based upon the above calculations, the Arbitrator hereby finds that Petitioner's average weekly wage was \$1,111.05 pursuant to Section 10 of the Act.

On the issue of temporary total disability benefits, (K), the Arbitrator finds as follows:

The Arbitrator has reviewed all evidence and testimony in this matter and hereby finds that Petitioner was temporarily and totally disabled from June 3, 2009 through June 22, 2009.

On June 2, 2009, Petitioner was seen at Optima Medical Associates. There, it was noted that Petitioner had numbness in his left thumb. Petitioner was diagnosed with ganglionic cysts causing radial nerve compression and numbness in his left hand. At that time, Petitioner was told to remain off work until surgery was scheduled. It was noted in Petitioner's work status report that day that Petitioner could not use his left hand due to neuropathy, which would cause an unsafe work condition. (PX 1).

At trial, Petitioner testified on direct examination that he went off work as of June 3, 2009.

On cross-examination, Petitioner was presented with Respondent's Exhibit 4, which is an Employee Request for Temporary Total Disability Benefits form, signed by Petitioner. The form indicates Petitioner requested TTD benefits as of June 10, 2009 and states that a physician's statement was attached describing his medical status. (RX 4). It is clear Petitioner did not recall the details surrounding his signing of this form.

The Arbitrator notes that the medical records attached to Respondent's Exhibit 4 are from Mary Kronenburger, a nurse practitioner from Optima Medical Associates, and were filled out and signed on June 1, 2009. Ms. Kronenburger indicates that the mass on Petitioner's left wrist had increased in size as of June 1, 2009 and that Petitioner had been referred for surgical excision of the mass. She further indicates that Petitioner was experiencing pain and numbness in his left wrist and hand. As of June 1, 2009, Ms. Kronenbuger indicated that Petitioner could work without restriction and that Petitioner would require restrictions after surgery. (RX 4).

The Arbitrator specifically notes that the form filled out by Ms. Kronenburger on June 1, 2009 predates the off work status placed on Petitioner at Optima Medical Associates on June 2, 2009. At trial, Petitioner testified that each time he received a work status report, he would take the form to Kenneth, the workers' compensation coordinator for Stateville, whose signature appears on Respondent's Exhibit 4. Petitioner further explained that he would have taken the off work slip he received on June 2, 2009 to Kenneth.

Although the TTD request filled out by Petitioner indicates that TTD was requested as of June 10, 2009, it is clear to the Arbitrator that although Petitioner was cleared to return to work on June 1, 2009, the medical records show he was taken off work on June 2, 2009. Furthermore, the testimony of Petitioner that he was off work from June 3, 2009 through his return to work on June 22, 2009 is unrebutted by any testimony or evidence in this case.

Therefore, the Arbitrator hereby orders Respondent to pay Petitioner temporary total disability benefits of \$740.70 per week for 2.86 weeks from June 3, 2009 through June 22, 2009 pursuant to Section 8(b) of the Act.

On the issue of the nature and extent of Petitioner's disability, (L), the Arbitrator finds as follows:

Petitioner in this case sustained a ganglionic cyst which caused radial nerve compression and numbness in his left hand and required surgical excision. (PX 1, 3).

At trial, Petitioner testified concerning the current condition of his left wrist and hand. He stated that when the palm of his left hand is touched he experiences tingling in the left, up into his fingers. He further explained that although surgery helped him a lot, his left hand still feels very different than his right hand. Petitioner has experienced tingling in his left hand since May 5, 2009.

Based upon the medical records and testimony in this case, the Arbitrator hereby finds that Petitioner has sustained a 7-1/2% loss of use of his left hand.

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerald Burnett,
 Petitioner,

14IWCC0084

vs.

NO: 07 WC 46312

Monterey Coal Company,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of occupational disease, statute of limitations, permanent disability, and evidentiary errors, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 12, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014

DRD:bjg
 0-1/23/2014
 68


 Daniel R. Donohoo


 David L. Gore


 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0084

BURNETT, JERALD

Employee/Petitioner

Case# 07WC046312

MONTEREY COAL CO

Employer/Respondent

On 6/12/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0755 CULLEY & WISSORE
BRUCE WISSORE
300 SMALL ST SUITE 3
HARRISBURG, IL 62946

0332 LIVINGSTONE MUELLER ET AL
L ROBERT MUELLER
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)

COUNTY OF SANGAMON) SS.

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Jerald Burnett
Employee/Petitioner

Case # 07 WC 46312

v.

Consolidated cases: N/A

Monterey Coal Co.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **January 15, 2013 and April 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?

☐ TPD☐ Maintenance☐ TTD

- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other: Statute of Limitations; Section 1(f); Whether Petitioner developed an occupational lung disease as a result of exposure in the course of his employment with Respondent.

FINDINGS

On 4-30-04, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner was last exposed to coal dust and fumes arising out of and in the course of his employment.

On the date of accident, Petitioner was 59 years of age, and *married with 0* dependent children.

In the year preceding the injury, Petitioner earned \$55,817.05; the average weekly wage was \$1073.40.

ORDER

Petitioner failed to prove he developed an occupational lung disease as a result of exposure in the course of his employment with Respondent. Petitioner's claim for compensation is denied. No benefits are awarded.

RULES REGARDING APPEALS

Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

James R. Lindsay
Signature of Arbitrator

June 10, 2013
Date

ICArbDec p. 2

JUN 12 2013

Jerald Burnett v. Monterey Coal Company, 07 WC 46312

This case was initially tried on January 15, 2013 with proofs left open per the agreement of the parties. Proofs were closed on April 15, 2013. Two witnesses testified at arbitration: Petitioner and Larry Watson.

The Arbitrator finds:

Petitioner, born on September 16, 1944, was 68 years old on the date of arbitration. Petitioner testified that he quit school after the tenth grade. According to Petitioner, his family moved, he transferred to a new school and had trouble keeping up so he quit. Petitioner testified that he spent 35 years in the coal mine, fifteen of which was underground. Petitioner testified that he was regularly exposed to coal and silica dust, diesel exhaust, and roof bolting glue fumes while mining. Petitioner further testified that his last day of work at the coal mine was on April 30, 2004 at Respondent's Monterey Coal Company's #1 Carlinville Mine. Petitioner testified he was working as a top shop repairman specialist when he quit. According to Petitioner he quit mining because he could no longer perform his job properly due to shortness of breath. Petitioner testified he had intended to work until age 65, then changed his goal to 62, but quit earlier. Petitioner testified that a co-worker suggested retirement to him after observing Petitioner leaning on a broom to stay standing while sweeping. Petitioner testified that he hasn't looked for any work since retiring because of his work history, limited education, and difficulty breathing. Petitioner testified that he has no other skills beyond coal mining. He did perform some construction work for Respondent and a construction company.

Petitioner testified that he first noticed breathing problems in the late 1990's while trying to tighten bolts on a man trip. He had to tighten the bolts to the necessary specification of 350 pounds. Tasks such as installing and repairing pumps in the lake, as well as walking the stairs to the hoist house, also caused breathing problems. Petitioner testified he would lose his breath and have to stop what he was doing and sit down. His breathing problems were worse around heavier areas of rock and coal dust. Diesel fumes and roof bolting glue fumes also affected him. To lessen his dust exposure Petitioner bid into his surface mining maintenance job.

Petitioner further testified that he currently becomes short of breath walking a half of a block. Petitioner testified he can climb a half a flight of stairs before having to stop and rest. His breathing problems have worsened since their onset. Whenever he goes anywhere his wife drops him off at the door to limit his walking. Petitioner would not take a mining job if offered today. Petitioner testified that he doesn't think he has the lung capacity to do any work unless he could sit. He also felt he did not have the work skills for such a job.

Petitioner testified he was treated by Dr. Chopra for his breathing problems. He brought his breathing medications and his nebulizer to arbitration. He also uses Advair and Combivent inhalers. Petitioner testified that he began smoking cigarettes around age 16 or 17 and quit when he was 49, averaging a pack or a little more each day. He acknowledged other health problems including an irregular heartbeat, high blood pressure, and prostate cancer. Petitioner's prostate cancer was diagnosed 6-7 years ago, and he was recently told it has spread to his lungs. Petitioner was also treated for throat cancer about a year after he left mining.

Under the current National Bituminous Wage Agreement, Petitioner's Exhibit 8, Petitioner would be earning \$27.41 per hour as a miner today.

Larry Watson testified on behalf of Petitioner. Mr. Watson has known Petitioner for 25-30 years. He and Petitioner worked at the same mine. Mr. Watson worked in the plant and Petitioner was across the tracks in

the shop. Mr. Watson saw Petitioner almost every day at work. He observed Petitioner huffing and puffing when he went to the shop for parts. He told Petitioner he should retire. Mr. Watson knew Petitioner had a hard time breathing. Mr. Watson noted one time that Petitioner had finished sweeping and was getting ready to shovel. He asked Petitioner if he was alright, and Petitioner told him he could not catch his breath. Mr. Watson stated that Petitioner had breathing issues prior to that time, "but there at [the] last it was bad."

Petitioner's medical history includes bilateral knee surgery (1972; 1981) from which Petitioner had osteoarthritis accompanied by pain, discomfort, and reduced range of motion throughout his life. (RX 1, p. 7) He had cataract surgery in 1991 and 1993. Petitioner underwent aortic bypass surgery to both legs to the femoral arteries in 1994. Petitioner had seven hernia repairs in 2002 and throat surgery for cancer of the throat in 2004. He was also treated for prostate cancer in 2005. (PX 1, dep. exhibit 2) Petitioner also introduced the records of Carlinville Area Hospital which note Petitioner's COPD, atrial fibrillation with reduced ejection fraction, a sleep study, arthritis, vocal cord cancer, and prostate cancer. (PX 7, e.g. p. 23, 31-33, 49-52, 54-57, 78, 85-86)

According to Dr. Chopra's records Petitioner had an episode of bronchial asthma in January of 2006 but thereafter he denied any problems with shortness of breath until late December when Petitioner began treating for exacerbations of bronchial asthma. (PX 6) During this time Petitioner was also examined at Carlinville Cardiology Clinic. Petitioner reported shortness of breath but "only at higher levels of activity [and not] with day to day normal activities." (PX 7, p. 53) It was noted that Petitioner has COPD "from prior tobacco abuse, and tobacco abuse is probably the reason for the leukoplakia that he has." (PX 7, p. 53) Petitioner underwent heart-related testing and studies during 2006. (PX 7)

Petitioner underwent treatment for throat cancer in 2007. During this time he denied any shortness of breath except for visits in April and December and he was diagnosed with acute sinusitis and early bronchitis (April) and COPD and acute bronchitis (in December). In October of 2007 Petitioner was examined by Dr. Chopra. Petitioner denied any shortness of breath. (PX 6, 7)

At his attorney's request Petitioner was examined by Dr. Glennon Paul on January 22, 2008. According to his report, Petitioner was being seen for a "Black Lung evaluation." Dr. Paul concluded Petitioner had coal workers' pneumoconiosis, emphysema, pulmonary fibrosis, and "all other diagnosis as listed above." (PX 1, dep. ex. 2)

Petitioner's medical records from Dr. Chopra were admitted into evidence. Petitioner denied any problems with shortness of breath when examined on January 25, 2008 and March 25, 2008. (PX 6)

Dr. Paul's deposition was taken on December 1, 2008. Dr. Paul is the Senior Physician at the Springfield Central Illinois Allergy and Respiratory Clinic. He is the Medical Director of St. John's Respiratory Therapy Department. Dr. Paul teaches internal medicine and pulmonology at the SIU Medical School. Dr. Paul has authored a book on asthma. He has examined miners for state and federal claims testifying predominantly for coal companies. Dr. Paul interprets about 5000 chest x-rays and pulmonary function tests each year. (PX 1, p. 6-8.

Dr. Paul reported that Petitioner was short of breath walking 1-2 blocks or climbing 1-2 flights of stairs. He gets wheezing, coughing, and increasing shortness of breath with an upper respiratory tract infection. Petitioner's medications were Advair, Combivent, Nasacort, and nebulizers with DuoNeb. Dr. Paul noted

Petitioner's smoking, mining, and medical histories. On physical exam Dr. Paul noted 2 plus wheezes and rhonchi on expiration. He felt Petitioner's chest film showed multiple small nodules throughout both lung fields with minimal fibrosis. Pulmonary function studies demonstrated a mild to moderate obstructive airways disease with a decreased diffusion capacity compatible with emphysema and pulmonary fibrosis. There was also a restrictive defect compatible with pulmonary fibrosis. Dr. Paul felt Petitioner had CWP, emphysema, and pulmonary fibrosis. (PX 1, Depo Exh. 2, Paul report).

Dr. Paul stated that Petitioner could not have further coal dust exposure without endangering his health. Petitioner's pulmonary diseases make him more vulnerable to upper respiratory infections and make recovery from them more difficult. Dr. Paul stated that Petitioner was on a significant amount of pulmonary medication. (PX 1, p. 25-26). Dr. Paul provided that Petitioner's pulmonary fibrosis was from his CWP, and his measured impairment on testing was due to his CWP and emphysema. Petitioner's CWP would have been present when he left the mines. (p. 29-30). Dr. Paul stated that Petitioner's clinical, radiographic, and physiologic abnormalities were secondary to all of his diagnoses. Petitioner's pulmonary impairment limits him to sedentary work. (p. 31-32).

On cross-examination Dr. Paul agreed that Petitioner had significant medical problems unrelated to mining. He felt Petitioner was obese, but not morbidly obese. (PX 1, p. 33-34). He agreed that Petitioner's cigarette smoking was significant and that cigarette smoking was the number one cause of emphysema in the country. (PX 1, p. 36) Petitioner's shortness of breath on exertion would be exacerbated by his decreased ejection fraction. (p. 37). Dr. Paul stated Petitioner was 70-75 pounds overweight, but this would have no effect on his pulmonary function results. His obesity would affect his feelings of shortness of breath. (p. 39). Dr. Paul explained how Petitioner's emphysema and fibrosis cause a decreased diffusing capacity. (p. 40). Dr. Paul provided that a lung condition can place an extra burden on heart function and vice versa. Petitioner's pulmonary diagnoses would make recovery from an acute heart event more difficult. (p. 46). Dr. Paul is not a B-reader.

Petitioner underwent a chest x-ray on August 3, 2009 at the request of Dr. Chopra in conjunction with Petitioner's complaints of a fever and cough. The findings included increased opacities at the bilateral lung bases which could be due to infiltrate given Petitioner's clinical history. He also had evidence of cardiomegaly. (RX 3)

At Respondent's request Dr. Peter Tuteur examined Petitioner on May 12, 2010. Dr. Tuteur is a pulmonologist who is the Director of the Pulmonary Function Lab at Washington University and an assistant professor of medicine. Dr. Tuteur's deposition was taken on January 27, 2011 (RX 1). Dr. Tuteur testified that Petitioner has had pain and discomfort associated with his osteoarthritis throughout his life. He further testified that Petitioner told him his stair climbing was limited because of pain and weakness in his knees and hips. (RX 1, p. 7) In terms of weight-bearing ambulation, Petitioner's advanced osteoarthritis was disabling. Dr. Tuteur noted that when Petitioner was not weight-bearing and riding a bicycle Petitioner was able to put forth an effort which approached normal for his age. Petitioner complained of knee pain while cycling.

With regard to heart problems, Dr. Tuteur noted nonischemic cardiomyopathy (ie., inadequate function to sustain an appropriate cardiac output). (RX 1, p. 9) He noted Petitioner had atrial fibrillation due to a reduced ejection fraction which was controlled with medication. Petitioner's cardiac issues would affect his exercise tolerance. (p. 8-10). Dr. Tuteur stated Petitioner's weight put him in the obese category.

Petitioner's physical exam on May 12, 2010 was normal. Petitioner's pulmonary function testing did not show restriction, but mild obstruction that did not improve with bronchodilator administration. Exercise

testing was normal. (p. 11-13) Dr. Tuteur noted Petitioner was taking two inhalers and Duoneb to improve airflow obstruction. (p. 13-14) Dr. Tuteur testified that Petitioner did not have CWP "of sufficient severity and profusion to produce clinical symptoms, physical examination abnormalities, impairment of pulmonary function or radiographic changes." He felt Petitioner had chronic bronchitis caused by smoking. (p. 14-15)

On cross-examination, Dr. Tuteur agreed that the lower limit of normal for a diffusing capacity is 70% and that Petitioner's diffusing capacity was 64% and then 70%. CWP can cause a reduction in the diffusing capacity due to the obliteration of the capillary beds by fibrosis. (RX 1, p. 18-19) Dr. Tuteur further testified that CWP causes scarring and fibrosis and the affected tissue cannot perform the function of normal healthy lung tissue. (p. 26-27). His recommendation for those with CWP is to avoid any further mine dust exposure. CWP progresses after exposure cessation 50% of the time, but that tends to occur in the first year, or at least the second year after exposure ends. It is possible to have CWP despite normal pulmonary testing and normal physical exams. The most common complaint of CWP victims is breathlessness. (p. 28-30)

Dr. Tuteur also agreed that pulmonary function testing will tell the type of any abnormality, but not its etiology which can be multifactorial. Restrictive and obstructive defects can be multi-factorial in etiology. Each can be aggravated by something other than what caused it. (RX 1, p. 35, 37). Chronic lung disease can put an extra burden on the functioning of the heart. There is no test to determine the cause of chronic bronchitis and obstruction. (p. 24)

Respondent introduced the October 13, 2010 x-ray interpretations of B-reader/Radiologist Dr. Wiot. Dr. Wiot read the chest film of May 12, 2010 as quality 1 and negative for CWP. He saw nothing but a slightly enlarged heart and mild rotatory scoliosis of the spine. (RX 2)

Petitioner periodically treated with Dr. Chopra throughout 2010 through April of 2012. On occasion Petitioner complained of some shortness of breath and other symptoms which the doctor diagnosed as exacerbations of bronchitis and/or COPD. Petitioner also saw the doctor for various other medical problems and complaints. (RX 3) Petitioner underwent another chest x-ray in June of 2011 for his bronchitis. The impression was "interstitial change in the lung bases consistent with fibrosis, stable since August 5, 2009. No acute infiltrates. Cardiomegaly with no evidence of CHF." (RX 3) Petitioner underwent another chest x-ray in September of 2011 due to complaints of shortness of breath. The interstitial changes were described as "stable." No acute infiltrates were noted. (RX 3)

Dr. Chopra authored a note to Petitioner's attorney on March 22, 2012, in which he indicated Petitioner has emphysema and chronic obstructive pulmonary disease which could be aggravated by coal mine exposure. He further stated petitioner was totally disabled and unable to be employed in any meaningful employment. (PX 6)

Petitioner met with Delores Gonzalez, a vocational rehabilitation counselor, on July 9, 2012. (PX 3)

Petitioner also offered the testimony and opinions of Delores Gonzalez, a vocational rehabilitation counselor. Her deposition was taken on October 3, 2012. Ms. Gonzalez is an independent contractor who works for the Social Security Administration. She works as a mentor/clinical educator for SIU Carbondale's Master's degree level students, and teaches vocational rehabilitation to students at SUI Carbondale and Maryville

University. In the past she also has worked with the Missouri Department of Rehabilitation Employment Services. (PX 3, p. 4-7)

On July 9, 2012 Ms. Gonzalez met with Petitioner and conducted vocational testing and reviewed medical records. Dr. Gonzalez elicited an occupational and educational history and performed a transferability of skills analysis. (PX 3, p.7-9) Ms. Gonzalez acknowledged she was not retained to try and find Petitioner a job or engage in any job finding activities or training. It was her understanding that after Petitioner quit working as a coal miner in April of 2004 he retired and had not worked since or tried to work since then. Ms. Gonzalez reviewed the depositions of Drs. Paul and Tuteur as part of her work-up. (p. 7-11) Ms. Gonzalez described Petitioner's limitations regarding shortness of breath. She noted that walking or any mild increase in activity causes shortness of breath. With overexertion he has a hard time getting air and gasps for breath at times. (PX 3, Depo Exh. 2, p. 2, Gonzalez report) Ms. Gonzales concluded that Petitioner had no transferable job skills outside of the mining industry. She felt he had significantly impoverished word, reading and spelling academic skills. He could not succeed in a clerical position and would have to learn new job kills though hands on job performance with verbal instruction. (*Id.*, p. 15) Ms. Gonzalez concluded that Petitioner had a residual functional capacity for work at the unskilled sedentary level and could not do manual labor on a full time basis. If Petitioner was limited to sedentary work, it could earn him an entry level wage of \$8.50 to \$10.00 an hour. However, prospective employers would be unlikely to hire Petitioner and would favor younger, more work-ready individuals with higher academic skills who would not need accommodation. (*Id.*, p. 17)

Petitioner introduced the deposition of his treating physician Dr. Chopra, taken on November 27, 2012. Dr. Chopra has practiced family medicine in Carlinville for 32 years. During this time he has treated many coal miners for COPD, asthma, bronchitis sinusitis, coal workers' pneumoconiosis (CWP), and lung cancer. He is affiliated with Carlinville Area Hospital. A chart showed has treated Petitioner since 2005, but he has taken care of him much longer. He followed Petitioner on a regular basis because of the number of problems he has. (PX 2, p. 7-9).

Dr. Chopra stated pneumoconiosis, along with bronchitis, emphysema, and asthma can all result in obstructive lung problems. He felt that Petitioner's breathing problems are related to these conditions, and that there is no way to take them apart in terms of contribution. Dr. Chopra stated that Advair and Symbicort were prescribed to prevent pulmonary exacerbations and Combivent and antibiotics were given for acute exacerbations. Prednisone was given if Petitioner did not respond to regular treatment. Dr. Chopra stated that Petitioner has COPD and chronic bronchitis with acute exacerbations. Petitioner's COPD includes emphysema, obstructive lung disease, asthma and possibly pneumoconiosis. (PX 2, p. 10-12). Petitioner should not be exposed to coal or hazardous conditions. He found Petitioner to be totally disabled from gainful employment. (p. 15).

Dr. Chopra stated that Petitioner has significant heart problems and is under the care of a cardiologist for coronary artery disease. He has had femoral bypass surgery for circulation issues. Petitioner is seeing oncologist Dr. Gionnone for his recent lung cancer. (PX 2, p. 15-16). A report from 2006 from Dr. Zuck noted an ejection fraction of 35% which will cause shortness of breath. Petitioner weighed 247 pounds at five foot eight. He was overweight by about 71 pounds. This condition would also cause shortness of breath. (p. 22-23).

Petitioner's lung cancer recently was diagnosed. In the past he had prostate and laryngeal cancer. (PX 2, p. 17). Dr. Chopra's records indicated a CT guided lung biopsy was done on September 14, 2012. Petitioner's

lung cancer was secondary to his prostate cancer. (p. 19). Petitioner also has had arthritis in his back and knees going back several years. (p. 25-26).

Petitioner introduced B-reader/radiologist Dr. Smith's January 4, 2013 interpretation of Petitioner's August 9, 2007 x-ray and August 31, 2012 CT scan. Dr. Smith interpreted the chest film as showing CWP category 1/1 in all lung zones. Dr. Smith concluded that the CT scan demonstrated diffuse pulmonary interstitial fibrosis with small opacities in all lung zones bilaterally, and had findings typical of simple CWP. (PX 4)

Respondent also introduced B-reader/Radiologist Dr. Shipley's March 1, 2013 review of the 08-31-12 CT scan. Dr. Shipley noted the absence of any upper zone predominant small or large rounded opacities suggestive of coal workers' pneumoconiosis. Dr. Shipley's formal impression was no CT findings consistent with coal workers' pneumoconiosis, moderately extensive basilar predominant fibrotic interstitial lung disease three lower lobe pulmonary nodules suspicious for malignancy, metastatic disease from an extra-thoracic primary or multifocal lung cancer. (RX 4)

The Arbitrator concludes:

Based upon the medical records and testimony, Petitioner does have an obstructive airways problem. Dr. Paul diagnosed emphysema and Dr. Tuteur diagnosed chronic bronchitis, both of which fall under the COPD umbrella. While the statute of limitations for coal workers' pneumoconiosis is five years, there is no variation of the general three year statute of limitations for occupational diseases for COPD. Further, the Arbitrator notes that Dr. Tuteur both wrote in his report and testified that Petitioner's chronic bronchitis is related to his cigarette smoking. Both Dr. Tuteur and Dr. Paul noted that Petitioner had a significant cigarette smoking history. Dr. Paul, Dr. Tuteur and Dr. Chopra all agreed that cigarette smoking was the number one cause of these obstructive diseases. Further, the Arbitrator notes that Dr. Zuck, Petitioner's cardiologist, indicated in a report to Dr. Chopra that Petitioner's COPD was from prior tobacco abuse. There is nothing in the records from the cardiologists to reflect a diagnosis of an occupational lung disease, or coal workers' pneumoconiosis. Although Dr. Chopra discussed coal workers' pneumoconiosis, there is no indication in his testimony or his records that he ever actually diagnosed Petitioner with the disease or how he arrived at such a diagnosis for Petitioner. Dr. Tuteur indicated that there was no evidence in his evaluation to support a diagnosis of coal workers' pneumoconiosis. The Arbitrator notes that his evaluation of Petitioner was somewhat more thorough than that performed by Dr. Paul. The Arbitrator also notes Petitioner's obesity, osteoarthritis, heart problems and cancer. The Arbitrator adopts the well qualified opinions and reports of Dr. Tuteur, Dr. Wiot, and Dr. Shipley in support of her decision.

Based upon the evidence presented, the Arbitrator concludes that Petitioner has failed to prove by a preponderance of the evidence that he developed an occupational lung disease as a result of any exposures in the course of his employment with the Respondent. Petitioner's claim for compensation is denied. No benefits are awarded.

All other issues are moot.

STATE OF ILLINOIS)
) SS.
 COUNTY OF CHAMPAIGN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carol A. Parks,

Petitioner,

14IWCC0085

vs.

NO: 12 WC 10120

SimontonWindows,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, permanent disability and evidentiary issues, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.


IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.


14IWCC0085

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$26,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014


Daniel R. Donohoo


David L. Gore


Mario Basurto

DRD:bjg
0-1/23/2014
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0085

PARKS, CAROL A

Employee/Petitioner

Case# **12WC010120**

SIMONTON WINDOWS

Employer/Respondent

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0157 ASHER & SMITH
CRAIG SMITH
1119 N MAIN ST PO BOX 340
PARIS, IL 61944

0143 CRAIG & CRAIG
GREGORY C RAY
PO BOX 689
MATTOON, IL 61938

STATE OF ILLINOIS)
)SS.
 COUNTY OF CHAMPAIGN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

CAROL A. PARKS

Employee/Petitioner

v.

Case # 12 WC 10120

Consolidated cases: _____

SIMONTON WINDOWS

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **April 18, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other: Should Petitioner's *Petrillo* objection be sustained or overruled?

FINDINGS

On **October 13, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$25,414.48**; the average weekly wage was **\$488.74**.

On the date of accident, Petitioner was **43** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services (see below).

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$8,919.66** for other benefits, for a total credit of **\$8,919.66**.

Respondent is entitled to a credit for medical bills paid by its group carrier under Section 8(j) of the Act, and shall hold Petitioner harmless from all claims which may be made against her by virtue of the payments.

ORDER

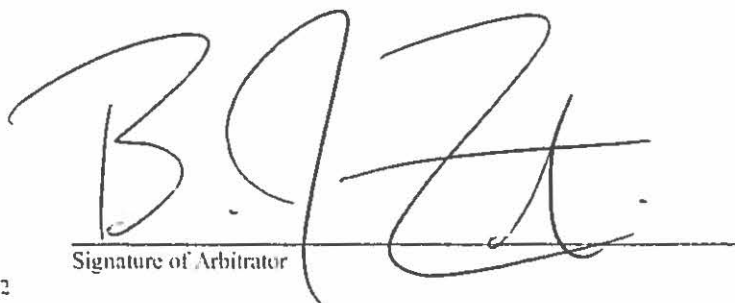
Respondent shall pay Petitioner temporary total disability benefits of **\$325.83/week** for **40 6/7 weeks**, commencing **December 30, 2011** through **October 10, 2012**, as provided in Section 8(b) of the Act. Respondent shall receive credit for **\$8,919.66** in non-occupational indemnity disability benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of **\$293.24/week** for **75 weeks**, because the injuries sustained caused the **15%** loss of use to the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services set forth in Petitioner's Exhibits 6 through 9, as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. Respondent is entitled to a credit for medical bills paid by its group carrier under Section 8(j) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

06/03/2013

Date

JUN - 7 2013

STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

141WCC0085

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

CAROL A. PARKS
Employee/Petitioner

v.

Case # 12 WC 10120

SIMONTON WINDOWS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Carol Parks, testified that she has been an employee of Respondent, Simonton Windows, since 2004. On October 13, 2011, she was working on the patio door line, building doors. On that day, she was on the Rotox corner cleaner, trying to keep up with the welder. She was putting frames into the Rotox, which required her to pull the frames out and twist and turn. The frames were approximately eight feet by six feet in height and width. As she was putting frames into the Rotox machine and pulling them out, she testified that the frame got caught on a table which was uneven. As she pulled on the frame, she testified that she heard a "pop" in her left shoulder. At that time, she noticed that her shoulder stung, and as the day went on she told the Group Leader/Backup Supervisor, Eric Vice, about her injury. She testified that the next morning she had a headache, her neck was stiff, her neck hurt, her shoulder hurt from her shoulder to her fingertips, and there were sharp, stabbing pains.

Upon returning to work the next day, October 14, 2011, Petitioner prepared an Incident Report with her supervisor. (See Petitioner's Exhibit (PX) 12). On October 14, 2011, she also saw the plant nurse, Tod Brewer, who noted in his records that Petitioner "was trying to keep up c the welder, doing rotox corner cleaner job. Sts frames were getting caught on tables due to different ht. Sts was moving frames that are est to be 4 to 5 pounds, but awkward in size. Thought was simple strain while @ work p work ↑ pain." Nurse Brewer noted the chief complaint was left chest wall and shoulder strain and further noted increased pain with range of motion to left upper extremity. (PX 12).

Petitioner continued to work with instructions from Mr. Brewer that she self-monitor her activities at work to reduce the risk of injury irritation. (PX 12). Mr. Brewer had Petitioner sign an Authorization for Medical Records and Communication Release for the medical treatment he provided to Petitioner. (RX 2). He noted that Petitioner was complaining of increased pain, with range of motion to the left upper extremity, and noted that he would re-check Petitioner on October 17, 2011. On October 17, 2011, Mr. Brewer noted that he was setting up an appointment with Dr. Jeffrey Brower, Respondent's company doctor, on October 18, 2011. (PX 12).

On October 18, 2011, Petitioner saw Dr. Brower, who urged her to see her physician. Dr. Brower placed Petitioner on restrictions consisting of: (1) no pushing, pulling 20 pounds; (2) no lifting over 10 pounds; and (3) no overhead activity. (PX 12).

Petitioner saw her family physician, Dr. Reid Sutton, on October 19, 2011. Dr. Sutton recommended a MRI of her left shoulder and left anterior chest, indicating that a muscle tear was a possibility. (PX 1).

The MRI was performed on October 20, 2011, and the radiologist's impression was as follows: "The palpable mass appears to be a large lipoma. There appears to be shoulder peritendinitis or intrasubstance rotator cuff tear as described." (PX 2). Dr. Sutton referred Petitioner to Dr. Gary Ulrich, an orthopedic surgeon at UAP Clinic in Terre Haute, Indiana. (PX 3).

On November 17, 2011, Petitioner was seen by Billie Bonebrake, NP. Ms. Bonebrake noted that Petitioner "is being seen and evaluated for her left shoulder pain....after she was finishing a frame after the clean...she felt like somebody had punched her in the shoulder. She has not had any pain or problems with her shoulder into [sic] this time. Since his [sic] injury he [sic] she's had quite a bit of pain and difficulty with range of motion." The nurse also noted that Petitioner had a lipoma that was present on the front part of her chest on the side of her shoulder. She stated that Petitioner had this for about 10 years. It was reported that since the accident, the lipoma got larger. On physical examination, it was noted that abduction was more difficult to about 90 degrees, and Petitioner had 3/5 rotator cuff strength. Hawkins testing was positive, and positive impingement was noted. It was Nurse Bonebrake's impression that Petitioner had left shoulder pain, left shoulder impingement, and left anterior chest lipoma. On that date, Petitioner was given work restrictions and a follow-up appointment with Dr. Ulrich on November 22, 2011. (PX 3).

Petitioner saw Dr. Ulrich on November 22, 2011, and he noted that she was there for her left shoulder. He further stated that she had two issues. His physical exam on that date revealed signs of impingement syndrome in grading of three over five strength; also, she had subacromial crepitus, no instabilities, and anterior chest lipoma. (PX 3; PX 13, p. 8). His impression was impingement syndrome of Petitioner's left shoulder, and lipoma chest wall. (PX 13, p. 8). It was the doctor's recommendation that the lipoma removal by general surgery service and arthroscopic subacromial decompression be performed at one time. He then set up an appointment for Petitioner to see Dr. Tisinai, a general surgeon, to initiate surgical coordination procedures. (PX 3; PX 13, p. 9).

On December 13, 2011, Petitioner was seen by Dr. Karen Tisinai, who noted that Petitioner had a lipoma, left chest, times one to two years, a torn rotator cuff left shoulder since October 2011, and that the shoulder was "work comp." Dr. Tisinai further noted in her reports that Petitioner was scheduled to have a left rotator cuff repair with Dr. Ulrich, and that he has asked that Dr. Tisinai see Petitioner for excision of the mass under the same anesthesia. (PX 3).

On December 30, 2011, Petitioner underwent two surgeries, which consisted of arthroscopic acromioplasty, arthroscopic distal clavicle excision, and excision of submuscular lipoma from the upper left chest wall. Dr. Ulrich's pre-operative and post-operative diagnosis was chronic impingement of the left shoulder, and Dr. Tisinai's pre-operative and post-operative diagnosis was submuscular lipoma. (PX 4). Following surgery, Petitioner saw Dr. Tisinai on January 10, 2012. Dr. Tisinai noted that Petitioner

was feeling well with no complaints. Her surgical site was clean, dry, and intact, with no signs of redness, swelling, drainage, or infection. Dr. Tisinai's impression of Petitioner on this date was noted as "healed and released," and the doctor told Petitioner to return or call the office as needed. (PX 16). Petitioner testified that she did not return to Dr. Tisinai for any further treatment following her post-operative visit on January 10, 2012.

Following surgery, Dr. Ulrich referred Petitioner to Paris Community Hospital Physical Therapy Department for range of motion and strengthening therapy. Petitioner continued physical therapy from January 4, 2012 until March 22, 2012. (PX 5).

Petitioner followed-up with Dr. Ulrich's office on January 12, 2012. It was noted at that appointment that Petitioner was still in pain, her sutures were removed, and she was going to be weaned out of sling that week, with follow-up in four weeks. Petitioner then followed up with Dr. Ulrich on February 2, 2012. His notes indicated under "Vital Signs" that Petitioner was still in pain, and she was improving her motion. Dr. Ulrich recommended that Petitioner continue physical therapy strengthening and continued to restrict her from work. Petitioner was next evaluated by Dr. Ulrich on March 1, 2012. It was noted that she was still having pain and some spasms in her left shoulder. The doctor's exam revealed that Petitioner had para trapezial spasm. His recommendations were for functional rehabilitation, usage of a TENS unit, and for her to remain off work and re-check in a month. (PX 3).

Petitioner was next seen by Dr. Ulrich on March 29, 2012. He noted that she had full range of motion, mild impingement, and no weakness, and released Petitioner to return to work on April 2, 2012. (PX 3).

Petitioner stated that upon delivering Dr. Ulrich's work restriction to Respondent, she was told by Kim Ashby, HR Director, and Tod Brewer, the plant nurse, that it was too early for her to return after her surgery, and that she would need to see Respondent's company doctor, Dr. Brower. Petitioner testified that it was also Dr. Brower's opinion that she should not return to work, and he noted in his office records that he thought that she should continue her home exercises, and he would recommend that she remain off work until she was more comfortable. (PX 12). Dr. Brower told Petitioner that her shoulder surgery would take anywhere from six months to one year for her to recover, and he filled out long-term disability papers, and continued to restrict Petitioner's work. Petitioner next saw Dr. Brower on May 1, 2012, where he recommended that she continue her home exercises; he thought that she was making slow progress. He further noted that he had filled out disability papers for her that would be in effect for the following three months. (PX 12).

Petitioner was next seen on August 7, 2012, this time by Dr. Brower's nurse practitioner, Tonya Heim. Nurse Heim noted in her records that Petitioner would remain on temporary disability at that time, and that she would discuss with Dr. Brower and see if he would like to have her return again in two weeks. (PX 12).

On August 21, 2012, Dr. Brower saw Petitioner for a "fit for duty" evaluation. At that time, he encouraged Petitioner to continue her home exercises to maintain her motion and strength, and reported that he would keep her off work for another six weeks and see her back at that time. (PX 12).

Petitioner followed-up with Dr. Brower on October 2, 2012. His note states that she was there for "fit for duty" follow-up evaluation. He recommended a functional capacity evaluation (FCE) prior to her

returning to work. (PX 12). On October 10, 2012, a FCE was performed. The FCE was set up by Dr. Brower, and the diagnosis on the FCE was S/P left subacromial decompression, with a date of injury listed as October 2011. The FCE summary states: "The worker, Carol Parks, was referred to this facility per Dr. Jeffrey Brower, with the diagnosis of S/P left subacromial decompression to undergo an FCE on this date. The worker was employed as a patio door laborer for Simonton Window. . ." (PX 15). The therapist's opinion was that Petitioner could function on a full-time basis as follows:

- Lifting/Carrying – 37# floor to waist, 40# 12" to waist, 30# waist to shoulder, 25# shoulder to overhead occasionally
- Pushing/Pulling – Pushing 73.4# of force and pulling 81.6# of force occasionally
- Sitting/Standing/Walking – Unrestricted
- Climbing – Unrestricted
- Reaching/Gripping/Fine Motor – Reaching forward constantly, overhead frequently; Gripping and fine motor is unrestricted
- Lower Level Positions/Movements – Unrestricted.

(PX 15).

Petitioner testified that she did not return to work in October 2012 due to undergoing a medical procedure which is not related to the injury at issue. She returned to work on January 14, 2013, with restrictions as noted on the Simonton Return to Work Form. (PX 14).

Petitioner testified that she currently continues to notice pain in her shoulder. She testified that she does not work on patio doors anymore, but has been transferred to a different line because the doors are too bulky on the patio door line. She is currently working with restrictions of no lifting, pushing, and pulling more than 35 pounds. Petitioner also testified that she continues to use the TENS unit which was provided to her following her left shoulder surgery. Petitioner also currently takes over-the-counter medications and Vicodin for the pain.

Dr. Ulrich testified that when he examined Petitioner on November 22, 2011, his exam revealed signs of impingement syndrome and a grading of 3/5 strength. The doctor also reported that she also had subacromial crepitation; no instabilities; and anterior chest lipoma. His diagnosis was impingement syndrome of the left shoulder, lipoma chest wall. (PX 13, p. 8). Dr. Ulrich opined that Petitioner's work injury of October 13, 2011 could have caused the impingement syndrome. (PX 13, pp. 8-9). Dr. Ulrich further opined that Petitioner's work injury was a causative factor in his recommendation for her to have surgery. (PX 13, p. 9).

Prior to surgery, x-rays were performed, where a change was noted about the acromion process, which was most likely causing some spurring. (PX 13, p. 18). During his surgery, Dr. Ulrich found Petitioner had Type 3 acromium, which he reduced to Type 1 acromium. (PX 13, p. 18). Dr. Ulrich further opined that the spurring he noted in surgery could have been exacerbated by Petitioner's work. (PX 13, pp. 18-19). During his surgery, Dr. Ulrich also removed eight millimeters of the distal clavicle, which he felt was part of the impingement syndrome process. (PX 13, p. 19). He further opined that Petitioner's pain complaints could have been caused by her Type 3 acromium. (PX 13, p. 20). Dr. Ulrich stated that Petitioner's history of fibromyalgia was not a factor in Petitioner's case. (PX 13, p. 22). Dr. Ulrich further opined that Petitioner's lipoma and the pain in her shoulder joint were two separate entities,

and he did not think that Petitioner could have confused the symptoms because he diagnosed them and treated them as two separate entities. (PX 13, p. 26).

Petitioner offered into evidence a series of medical bills she claims she incurred as a result of the alleged work injury. (See PX 6-9). The parties stipulated on the record that should Petitioner prevail on the present claim, that Respondent should be given applicable credit pursuant to Section 8(j) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), and further that Respondent would in that case hold Petitioner harmless from any claims for payment made on those bills. The parties also stipulated that should Petitioner prevail, Respondent would reimburse her for all related out-of-pocket medical expenses incurred as a result of the claim at bar.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Based upon the evidence presented at trial, the Arbitrator concludes that Petitioner established that she sustained an injury that arose out of and in the course of her employment by Respondent. Petitioner testified that while working on the Rotox frame cleaner, she was trying to keep up with the welder, and was pushing and pulling large awkward frames out of the corner cleaner when the frames would get caught on the tables, which were uneven. While attempting to lift the frame out of the corner cleaner, she noticed pain in her left shoulder and upper chest muscle. Both Petitioner's Incident Report and the Supervisor's Investigation Report indicate that Petitioner was moving/lifting frames to the corner cleaner when the large frames got caught between the tables due to tables being uneven. Petitioner told her supervisor, Eric Vice, that she had hurt her shoulder on the day of the accident. On the following day, October 14, 2011, both Petitioner and her Supervisor prepared an Incident Report and a Supervisor's Investigative Report. (See PX 12).

Petitioner was then seen by the plant nurse, Tod Brewer, on October 14, 2011, where he noted that her chief complaint was left chest wall and shoulder strain, with site of pain being upper left chest wall, neck, and left shoulder.

There is no evidence that Petitioner had any prior problems with her left shoulder. Medical records show that she received treatment for pain to her left shoulder and chest wall from the plant nurse and her family physician, Dr. Sutton, following her accident.

Dr. Sutton recommended a MRI, which was performed on October 20, 2011. The MRI revealed a palpable mass which appeared to be a large lipoma and left shoulder peritendinitis or intrasubstance rotator cuff tear. (PX 2). Following the MRI results, Dr. Sutton referred Petitioner to Dr. Ulrich, an orthopedic surgeon. Petitioner's examinations on November 17 and November 22, 2011, noted that she had pain in her left shoulder to her neck, and that her pain increased with range of motion to the left upper extremity, that reaching behind the back increased the pain, that a sharp pain occurred with lifting the left shoulder, that abduction was difficult, a 3/5 rotator cuff strength, positive Hawkins testing, positive impingement, and positive subacromial crepitation. (PX 3 and 13). Following Petitioner's appointment with Dr. Ulrich on November 22, 2011, he recommended that she undergo surgery to her left shoulder, and while under general anesthesia have her lipoma removed by general surgery. (PX 3, 13, and 16).

The Arbitrator finds that Petitioner was a credible witness. Her testimony was corroborated by the medical records in evidence. She openly testified in a forthcoming manner, including during her cross-examination testimony. She appeared to be endeavoring to tell the full truth during her entire testimony.

The Arbitrator finds that the above evidence shows that Petitioner sustained an accidental injury to her left shoulder while working for Respondent on October 13, 2011.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

On the issue of causation, there are two conflicting medical opinions. Respondent's company doctor, Dr. Brower, believes that Petitioner did not sustain a left shoulder strain, nor did she sustain any discrete injury to her left shoulder on October 13, 2011. Petitioner's treating physician, Dr. Ulrich, testified that there was a relationship between his diagnosis of impingement syndrome and her work injury. Furthermore, he opined that her work injury was a causative factor for the surgery he performed on December 30, 2011, consisting of arthroscopic acromioplasty and arthroscopic distal clavicle excision. The Arbitrator believes that the factual chain of events and the surgical findings support Petitioner's claim of causality.

Dr. Brower testified that he is board-certified in family medicine, and is not board-certified in occupational medicine. He has a contract with Respondent, wherein he travels to the plant to provide medical services to employees for non-occupational and occupational conditions. He felt that he had a physician/patient relationship with Petitioner. He did not recall whether he had reviewed the Incident Report prepared by Petitioner; he was not provided with, nor did he review any of the UAP Clinic/Dr. Ulrich records, and if he did, he could not remember reviewing them. Dr. Brower also testified that he is not holding himself out to be an orthopedic surgical expert. Dr. Brower opined that in October and November of 2011, he could not find any clinical findings to support that Petitioner had ongoing shoulder symptoms. (RX 1). However, during the same period of time, Dr. Ulrich noted that Petitioner had pain in her left shoulder to neck, abduction difficulty to 90 degrees, 3/5 rotator cuff strength, positive Hawkins, positive impingement, and positive subacromial crepitation. (See PX 3 and 13). Dr. Brower could not explain why Dr. Ulrich's office found positive Hawkins in two exams on November 17, 2011 and November 22, 2011, when he could not find the same positive seven days later when he saw Petitioner. (RX 1).

Dr. Brower, board-certified in family medicine, has admitted that he is not an orthopedic expert. Dr. Ulrich is a board-certified orthopedic surgeon and is a member of the American Academy of Orthopaedic Surgeons, American Osteopathic Academy of Orthopaedics, Past President of Sports Medicine Section – American Osteopathic Academy of Orthopaedics, and current President of American Osteopathic Association. (PX 13 – CV). Therefore, while Dr. Brower is qualified to address medical issues and opinions, the Arbitrator believes that Dr. Ulrich is better qualified to give a medical opinion concerning orthopedic care and treatment of Petitioner.

In order to sustain her burden of proof, Petitioner must show that her accident was the cause of her resulting injury. Having found that the accident did occur, the Arbitrator believes Petitioner has sustained her burden of proof on the issue of causal connection.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The care and treatment Petitioner received from Dr. Ulrich represents reasonable and necessary treatment for her work injury of October 13, 2011. Respondent shall pay reasonable and necessary medical expenses of \$34,741.85, as provided in Sections 8(a) and 8.2 of the Act, as reflected in Petitioner's Exhibits 6, 7, 8, and 9. Respondent is entitled to credit for any amounts paid on the awarded bills, either directly or through a group policy that falls within the purview of Section 8(j) of the Act. To the extent that Section 8(j) credit exists, Respondent shall keep Petitioner safe and harmless from any or all claims or liabilities that may be made against her by reason of having received such payments pursuant to Section 8(j) of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner's testimony and the medical records of Dr. Ulrich and Dr. Brower indicate that Petitioner was temporary and totally disabled from December 30, 2011 through October 10, 2012, representing 40 6/7 weeks. Petitioner is entitled to receive 40 6/7 weeks of temporary total disability (TTD) payments. Respondent is entitled to a credit of \$8,919.66 by reason of non-occupational indemnity disability benefits which were paid to Petitioner. (See Arbitrator's Exhibit 1).

Issue (L): What is the nature and extent of the injury?

On the issue of nature and extent of the injury, the Arbitrator must refer to Section 8.1b of the Act. The parties stipulated that neither side would submit AMA Impairment Reports pursuant to Sections 8.1b(a) and (b)(i) of the Act. This factor is hereby waived.

Concerning Section 8.1b(b)(ii) of the Act, Petitioner has testified that she no longer works on the patio door line due to her restrictions. She returned to work for Respondent on January 24, 2013, under the following restrictions:

- Lifting/Carrying – 37# floor to waist, 40# 12" to waist, 30# waist to shoulder, 25# shoulder to overhead occasionally
- Pushing/Pulling – Pushing 73.4# of force and pulling 81.6# of force occasionally
- Sitting/Standing/Walking – Unrestricted
- Climbing – Unrestricted
- Reaching/Gripping/Fine Motor – Reaching forward constantly, overhead frequently; Gripping and fine motor is unrestricted
- Lower Level Positions/Movements – Unrestricted. (See FCE, PX 15).

Taking into account Petitioner's work restrictions in the context of her occupation, the Arbitrator gives ample weight to this factor.

With regard to Section 8.1b(b)(iii) of the Act, Petitioner was 43 years old at the time of her injury. (See Arbitrator's Exhibit 1). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability (PPD) will be moderately greater than that of an older individual because Petitioner will have to live with the consequences of the injury for a longer period of time. The Arbitrator places some weight on this factor.

The Arbitrator next turns to Section 8.1b(b)(iv) of the Act. While permanent restrictions were established by the FCE and Respondent's company doctor, Dr. Brower, there was no evidence submitted to show any impairment in Petitioner's future wage earning capabilities. Accordingly, no weight is given in regard to this factor.

With regard to Section 8.1b(b)(v) of the Act, Petitioner's accident caused a strain/sprain of her left shoulder, resulting in impingement. She underwent arthroscopic surgery as a result of this condition, including an acromioplasty and a distal clavicle excision. She credibly testified that she continues to have pain in her left shoulder, decreased range of motion, loss of strength, and continues to use a TENS unit and take pain medication. Great weight is given to this factor.

Based on the factors set forth in the Act, the Arbitrator finds that Petitioner has sustained a 15% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act, and is awarded permanent partial disability benefits accordingly.

Issue (O): Should Petitioner's *Petrillo* objection be sustained or overruled?

Petitioner objected to Dr. Brower's testimony concerning the care and treatment of Petitioner based upon *Petrillo v. Syntex Laboratories, Inc.*, 148 Ill. App. 3d 581, 499 N.E.2d 952 (1st Dist. 1986). The record indicates that Dr. Brower provides medical services to Respondent and also medical services/treatment to its employees, such as Petitioner. Tod Brewer, Respondent's company nurse, stated that he had Petitioner sign a medical authorization form covering his treatment. The record does not indicate whether said Authorization for Medical Records and Communication Release was also signed with the purpose of covering Dr. Brower's treatment. (See RX 2).

Respondent's counsel wrote a detailed letter asking Dr. Brower to comment on medical treatment provided, causal connection, accident, and permanency. (RX 1, Dep. Exh. 2). Dr. Brower stated that Petitioner was not aware that he was giving an opinion on whether she had a work injury or not, and did not get her permission or waiver for him to give his testimony. (RX 1, p. 56).

While the record before the Arbitrator does not show whether Dr. Brower advised Petitioner that the Authorization for Medical Records and Communication Release she signed on October 14, 2011 would also cover his medical care and treatment of her, the Release could be interpreted as covering his medical treatment of Petitioner. (See RX 2). Therefore, the Arbitrator overrules the *Petrillo* objection, and allows Dr. Brower's testimony.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Royce McCain,

Petitioner,

14IWCC0086

vs.

NO: 10 WC 45985

Kellermeyer Buidling Services, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, prospective medical care and vocational rehabilitation, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 24, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0086

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$4,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014

DRD:bjg
0-1/23/2014
68


Daniel R. Donohoo


David L. Gore


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWC0086

McCAIN, ROYCE

Employee/Petitioner

Case# **10WC045985**

KELLERMEYER BUILDING SERVICES
INC

Employer/Respondent

On 5/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

BROWN & BROWN
RICHARD E SALMI
5440 N ILLINOIS ST SUITE 101
FAIRVIEW HTS, IL 62208

0238 LAW OFFICES OF WOLF & WOLFE
PATRICK R GRADY
25 E WASHINGTON SUITE 700
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
 COUNTY OF MADISON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 19(b)**

Royce McCain
 Employee/Petitioner

Case # 10 WC 45985

v.

Consolidated cases: _____

Kellermeyer Building Services, Inc.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on April 24, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On the date of accident, October 29, 2010, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned \$5,634.01; the average weekly wage was \$331.41.

On the date of accident, Petitioner was 36 years of age, single with 3 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$12,689.42 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$1,325.76 for other benefits, for a total credit of \$14,015.18.

Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 15 for medical services provided on or before December 5, 2011, but not thereafter, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule.

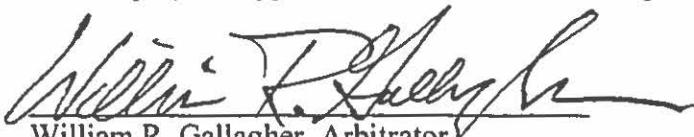
Respondent shall pay Petitioner temporary total disability benefits for 57 5/7 weeks at the rate of \$319.00 per week commencing October 29, 2010, through December 7, 2011, as provided in Section 8(b) of the Act. As stated in the Conclusions of Law attached hereto, Petitioner failed to prove he is entitled to any additional temporary total disability benefits or maintenance benefits.

As stated in the Conclusions of Law attached hereto, Petitioner failed to prove he is entitled to prospective medical treatment care.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


William R. Gallagher, Arbitrator
ICArbDec19(b)

May 17, 2013
Date

MAY 24 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on October 29, 2010. According to the Application, Petitioner slipped on soap on a floor and sustained injuries to the low back and body as a whole. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of medical bills, temporary total disability/maintenance benefits, vocational services and prospective medical treatment. Respondent disputed liability on the basis of causal relationship. There is also a dispute regarding the computation of the average weekly wage.

Petitioner was employed by Respondent as a head custodian and, on October 29, 2010, he was cleaning the men's restroom at Kohl's department store in Fairview Heights, Illinois, when he slipped on some liquid soap on the floor which caused him to fall. When Petitioner fell, he struck his head on a sink and landed on his right side. One of Kohl's employees assisted Petitioner to the employee's break room and Petitioner contacted Respondent by telephone and was directed to go to Concentra.

Petitioner testified that he customarily worked 38 1/2 hours per week for Respondent. At trial, a wage statement was tendered into evidence by Respondent for Petitioner's earnings from June 27, 2010, through October 23, 2010, a period of 17 weeks. The number of hours worked by Petitioner per week varied from a low of 23.75 hours for the week of August 29 through September 4, 2010, to a high of 42.75 hours for the week of August 22 through August 28, 2010. Petitioner's total gross pay for this period of time was \$5,634.01. At trial, Petitioner did not testify about whether he missed time or days from work, only worked partial weeks, etc.

The primary disabling injury claimed by Petitioner as a result of the accident of October 29, 2010, was to his low back. Petitioner previously sustained a work-related low back injury while working for a different employer which ultimately required three surgical procedures to the low back. The medical records regarding these prior surgeries were received into evidence at trial. Dr. David Raskas performed the three prior surgical procedures on Petitioner, the first of which took place on December 3, 2007. On that date, Dr. Raskas performed a microdiscectomy and laminotomy at L5-S1 on the left side. On March 18, 2008, Dr. Raskas performed the second surgery on Petitioner consisting of a complete discectomy and fusion with metal hardware at L5-S1. On September 3, 2008, Dr. Raskas performed the third surgical procedure on Petitioner, consisting of a revision laminectomy and microdissection at L5-S1. Petitioner remained under Dr. Raskas' care following the surgeries and, at one point, Dr. Raskas did suggest that Petitioner have a dorsal column stimulator surgically implanted; however, Petitioner declined to have that surgical procedure performed.

When Dr. Raskas saw Petitioner on March 25, 2009, he opined that Petitioner had permanent restrictions of no lifting, pushing, pulling over 20 pounds or repetitive bending, turning or twisting at the waist. He further noted that Petitioner needed to change positions of sitting or walking every 15 minutes and that Petitioner could work four hours a day, five days a week. At trial, Petitioner testified that it was his understanding that the work restrictions imposed by Dr. Raskas were only in reference to the work he did for the prior employer. Petitioner settled that prior workers' compensation case as a pro se for approximately \$107,000.00.

Petitioner returned to work in February, 2010, and was hired to work as a custodian by Eurice Cleaning Services, and he worked in that capacity at a Kohl's department store. Petitioner's job duties included buffing, vacuuming and mopping floors, cleaning windows and dressing rooms, sweeping the parking lot, collecting/disposing of trash, etc. Respondent subsequently took over the contract providing custodial services at Kohl's and Petitioner was hired by Respondent as the head custodian. Petitioner's job duties were similar to what they had been previously, but he testified that he also used a floor scrubber and was required to stock the supply room and bathrooms. Petitioner testified that the heaviest work he had to perform was when he had to lift the scrubber which weighed about 30 pounds, to access the floor area behind the toilets. Petitioner stated that he was able to perform all of the aforementioned job duties.

When Petitioner went to Concentra following the accident of October 29, 2010, he was seen by Dr. Gary Gray. When seen by Dr. Gray, Petitioner described his low back pain as being 8.5/10. On examination, Dr. Gray noted inconsistencies in Petitioner's responses when he performed the straight leg raising test between the supine and sitting positions. Dr. Gray opined that Petitioner had sustained some contusions and a muscular strain of the right lower extremity and released him to return to work. Several hours later, Petitioner contacted Dr. Gray by telephone and stated that he could not return to work and wanted to go to the ER. Petitioner went to the ER of Memorial Hospital on November 1, 2010, was x-rayed, diagnosed with a lumbosacral strain and discharged.

On November 4, 2010, Petitioner sought treatment from Dr. Miguel Granger, complaining primarily of low back pain. The range of motion of the back was limited so Dr. Granger authorized the Petitioner to be off work and referred him to Dr. Daniel Schwarze, an orthopedic surgeon.

Petitioner was seen by Dr. Schwarze on December 16, 2010, and he diagnosed Petitioner with right sciatica and a lumbosacral strain and prescribed physical therapy. Dr. Schwarze saw Petitioner again on January 13, 2011, and noted that straight leg raising was positive on the right; however, muscle strength testing and light touch sensation were both inconsistent. At that time, Petitioner requested to be reevaluated by his former spine surgeon Dr. Raskas. On January 31, 2011, Petitioner was seen by Dr. Granger who referred him to Dr. David Kennedy, a neurosurgeon.

At the direction of the Respondent, Petitioner was examined by Dr. James Doll, a physiatrist, on January 10, 2011. At that time, Petitioner complained of low back pain as being 7-8.5/10 and initially denied any prior low back problems but subsequently admitted having an L5-S1 spine fusion in 2007. Dr. Doll examined Petitioner and reviewed various medical records provided to him by the Respondent. Dr. Doll noted that Petitioner complained of low back pain with radiation down the right leg with diffuse numbness throughout the right leg without any particular pattern. Dr. Doll's findings on clinical examination were benign and the results of the diagnostic procedures he reviewed did not reveal any objective abnormalities associated with the injury of October 29, 2010. Dr. Doll recommended a period of physical therapy and stated that some work restrictions were appropriate during the time he was being so treated. Dr. Doll did not believe that any surgical intervention or injections were indicated.

On February 24, 2011, Petitioner was seen by Dr. David Kennedy. On examination, straight leg raising was equivocally positive on the right side and Dr. Kennedy diagnosed Petitioner with a lumbar strain with right sided sciatic features. He authorized Petitioner to remain off work and recommended a lumbar myelogram with a follow-up CT scan. On June 9, 2011, Petitioner had both of these diagnostic procedures performed on him. The lumbar myelogram revealed that the right L5 nerve root sheath was noted to fill to a lesser degree than the left L5 nerve root sheath. Dr. William Baber, the radiologist who performed the myelogram, noted that the asymmetric filling might be due to previous surgery but that impingement related to L4-L5 disc pathology could not be ruled out. Dr. Kennedy performed a selective nerve root block at L5-S1 on the right side on September 30, 2011. He subsequently referred Petitioner to Dr. Barry Feinberg, who performed epidural injections to Petitioner on both October 26 and November 17, 2011. Petitioner testified that he only experienced some temporary relief following these injections.

Dr. Kennedy saw Petitioner again on December 13, 2011, and noted that Petitioner had undergone the injections but experienced no lasting relief of pain. He opined that he did not feel that anything further could be done. He described Petitioner's range of motion of the back as being "fairly good" but that Petitioner felt that his pain precluded him from performing normal activities. He recommended that Petitioner undergo a functional capacity evaluation (FCE) to determine permanent restrictions. Dr. Kennedy's records of that date did not contain any statement that he was making any sort of surgical recommendation to the Petitioner.

At the direction of the Respondent, Petitioner was examined for the second time by Dr. Doll on December 5, 2011. Dr. Doll examined Petitioner and he reviewed both additional medical records and a surveillance video of the Petitioner that was obtained on October 26, and October 27, 2011. At that time, Petitioner complained of continued low back pain with right leg symptoms and stated that his pain was 8/10. On examination, Dr. Doll could not perform a straight leg raising test because of Petitioner's complaints of severe pain at any degree of elevation. In his review of the surveillance video, Dr. Doll noted that Petitioner engaged in numerous activities inconsistent with his complaints of severe low back pain. Specifically, Dr. Doll observed the Petitioner standing, descending stairs, and walking without any apparent difficulties other than a mild trace antalgic gait favoring the right leg. Dr. Doll opined that Petitioner was at MMI as of December 5, 2011, and that no further medical treatment was required.

As noted above, video surveillance of the Petitioner was obtained on October 26, and October 27, 2011, and a DVD of the surveillance was tendered into evidence at trial. On the video obtained on October 26, 2011, Petitioner was observed getting in and out of a vehicle, walking on a balcony while talking on a cell phone and going up/down stairs, performing all of these activities without any observable difficulties. In the video of October 27, 2011, Petitioner walked up the stairs with a slight limp that was not present the day before; however, Petitioner looked directly at the camera during this time although, at trial, Petitioner denied having observed the person obtaining the video.

On March 2, 2012, Benedicte Hanquet, a physical therapist, performed a functional capacity evaluation (FCE) of Petitioner at the request of Dr. Kennedy. She observed that Petitioner was making a full physical effort and opined that he could not return to work as a janitor. She

recommended work restrictions of no lifting over 31 pounds, no frequent lifting, carrying of 21 pounds only occasionally, and limitations on standing and stooping. Subsequent to the FCE, Hanquet reviewed the videos and opined that Petitioner's activities were consistent with restrictions she imposed. Although he did not examine the Petitioner again, Dr. Kennedy reviewed the FCE and imposed work restrictions of no lifting over 30 pounds and only occasional bending, twisting or stooping.

At the direction of counsel, Petitioner was evaluated by Frank M. Trares, a rehabilitation counselor on May 21, 2012. Trares was informed of Petitioner's back condition and work restrictions and he made some recommendations to Petitioner as to how to secure employment in a self-directed job search. No formal rehabilitation or re-training plan was recommended by Trares. At trial, Petitioner tendered into evidence job search logs regarding his self-directed job search which, to date, has been unsuccessful.

In correspondence dated September 13, 2012, from Dr. Kennedy to Petitioner's counsel, he advised that Petitioner had nerve root compression and had temporary relief from the nerve root block at L5-S1 and that the pain was caused by pressure on the S1 nerve root as a result of the fall. Dr. Kennedy was deposed on March 20, 2013, and his deposition testimony was received into evidence at trial. When deposed, Dr. Kennedy opined that the compression at the S1 nerve root was due to residual disc material from the fusion surgery and that Petitioner probably dislodged a piece of the disc material at the time of the fall of October 29, 2010. Although Dr. Kennedy had not made a prior surgical recommendation in his medical records, when he was deposed he made the recommendation that Petitioner undergo a surgical procedure consisting of a foraminotomy at L5-S1 on the right side. In explaining the statement made in his medical record of December 13, 2011, that the resulting further that could be done for Petitioner, Dr. Kennedy testified that this comment was meant to be limited to further pain relief procedures such as injections.

Benedicte Hanquet was deposed on June 8, 2012, and her deposition testimony was received into evidence at trial. Her testimony was consistent with the FCE report she prepared and she reaffirmed her opinions as to Petitioner's work restrictions. In regard to the surveillance video, Hanquet agreed that she could not determine if the Petitioner was in pain and that it appeared as though the Petitioner was aware of the fact that he was under surveillance.

Dr. Doll was deposed on April 23, 2013, and his deposition testimony was received into evidence at trial. Dr. Doll's testimony was consistent with his medical reports and he reaffirmed his opinion that Petitioner was at MMI as of the date of his examination of December 5, 2011, and that no further treatment was required. In reaffirming his opinions, Dr. Doll noted the lack of objective findings on examination, inconsistencies noted during both his examinations as well as other physicians, and the marked inconsistencies of Petitioner's significant back complaints of 8/10 and his observation of the Petitioner in the surveillance video. Dr. Doll also opined that the lesser filling of the L5 nerve root sheath was not caused by the accident of October 29, 2010, and that there was not any residual disc material dislodged as result of the accident of October 29, 2010. He based this upon his review of Dr. Raskas' surgical report which stated that all disc material had been removed as well as the fact that the nerve block at L5-S1 provided Petitioner with little or no relief of his claimed symptoms.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is not causally related to the accident of October 29, 2010.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator concludes that Petitioner was not a credible witness on his own behalf. Initially, the Arbitrator notes Petitioner's claim that he was symptom free following his prior three back surgeries and had no work restrictions prior to October 29, 2010, is contrary to the medical evidence. At trial, Petitioner repeatedly stated that the work restrictions previously imposed on him by Dr. Raskas only applied to the job that he performed for his prior employer. This statement is illogical and defies common sense.

The Arbitrator watched the surveillance video and noted that Petitioner was able to get in and out of a vehicle, walk on a balcony while talking on a cell phone, and go up/down stairs without any readily observable difficulties. The Arbitrator concludes that this is inconsistent with Petitioner's complaints of severe low back pain.

The Arbitrator finds the opinion of Dr. Doll to be more credible than that of Dr. Kennedy. Dr. Doll's opinion that there was no dislodged disc material at L5-S1 as a result of the accident of October 29, 2010, is credible and consistent with the surgical report of Dr. Raskas. Further, Dr. Doll noted the lack of objective findings on examination and various inconsistencies observed during his examination of Petitioner as well as examinations by other physicians. Dr. Doll also reviewed the video and opined that Petitioner's observed activities were inconsistent with his claim of being in severe pain.

In regard to disputed issue (G) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner had an average weekly wage of \$331.41.

In support of this conclusion the Arbitrator notes the following:

The wage statement tendered into evidence was for a period of 17 weeks, from June 27 through October 23, 2010, with a total earnings of \$5,634.01. Petitioner testified that he customarily worked 38 1/2 hours per week; however, the number of hours Petitioner worked indicated in the wage statement varied between 23.75 and 42.75 hours per week. There is no other evidence in the record regarding this issue. Accordingly, the Arbitrators unable to determine if Petitioner, in fact, worked a lesser number of weeks or portions thereof than the 17 weeks indicated in the wage statement.

The Arbitrator hereby finds the average weekly wage to be \$331.41, \$5,634.01 divided by 17 weeks.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner up to the time he was found to be at maximum medical improvement was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 15 for medical services provided on or before December 5, 2011, but not thereafter, as provided by Sections 8(a) and 8.2 of the Act subject to the fee schedule.

In support of this conclusion the Arbitrator notes the following:

As noted herein, Dr. Doll examined Petitioner on December 5, 2011, and opined that Petitioner was at MMI as of that date and not in need of any further medical treatment.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is not entitled to prospective medical treatment. In support of this conclusion the Arbitrator notes the following:

As stated herein, the Arbitrator found the opinions of Dr. Doll to be more credible than those of Dr. Kennedy and Dr. Doll has opined that Petitioner is not in need of additional medical treatment. The Arbitrator also notes that Dr. Kennedy did not make any sort of surgical recommendation until the time he was deposed and no such recommendation is contained anywhere in his treatment records.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

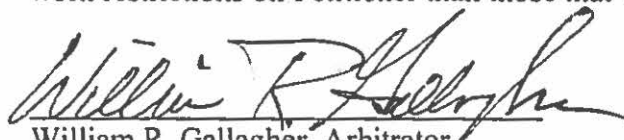
The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits for 57 5/7 weeks commencing October 29, 2010, through December 7, 2011.

The Arbitrator concludes that Petitioner is not entitled to either temporary total disability or maintenance benefits subsequent to December 7, 2011.

In support of these conclusions the Arbitrator notes the following:

As is noted herein, Petitioner was found to be at MMI by Dr. Doll of December 5, 2011.

Petitioner is not entitled to maintenance benefits because he failed to prove that the injury of October 29, 2010, resulted in a reduction of his earning capacity. The Arbitrator also notes that subsequent to the prior back injury and fusion procedure, Dr. Raskas imposed more significant work restrictions on Petitioner than those that were imposed by Dr. Kennedy in March, 2012.



William R. Gallagher, Arbitrator

09 WC 21532

14 IWCC 087

Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Feliciano Italiano,

Petitioner,

vs.

NO: 09 WC 21532
14 IWCC 087

Rausch Construction,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated February 5, 2014, having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

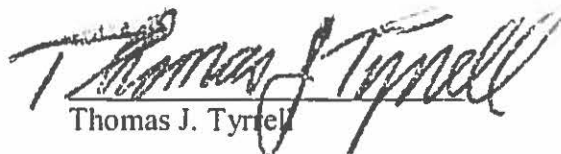
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated February 5, 2014 is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT:yl
51

MAR 14 2014


Thomas J. Tyrnell

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Accident</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FELICIANO ITALIANO,

Petitioner,

vs.

NO: 09 WC 21532
14 IWCC 087

RAUSCH CONSTRUCTION,

Respondent.

CORRECTED DECISION AND OPINION ON REMAND
FROM THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

This case comes before the Commission on remand from the Appellate Court of Illinois, First District, in case number 10 L 051017. On January 10, 2010, Arbitrator Black issued a decision finding that Petitioner failed to prove he suffered an accident arising out of and in the course of his employment with Respondent and did not award any benefits. On February 2, 2010, Petitioner filed section 19(e) special interrogatories asking the Commission five questions. On review, a majority of the Commission affirmed and adopted the Arbitrator's opinion, with one Commissioner dissenting. The Commission issued its decision on June 14, 2010. Petitioner then filed a motion with the Circuit Court on August 19, 2010, to set aside the Commission's decision and remand the case to the Commission with instructions to make findings in response to the section 19(e) interrogatories. The Circuit Court denied the motion on October 27, 2010. The Circuit Court heard the case and affirmed the Commission decision on April 6, 2011.

Petitioner timely appealed his case to the Appellate Court, which reversed and remanded it to the Commission on September 11, 2012. The Appellate Court held:

Where the objective medical evidence established that the claimant sustained an injury and the sole causation opinion attributed the claimant's condition to the repetitive motions of his work, the Commission's decision that the claimant did not sustain injuries that arose out of and in the course of his employment is against the manifest weight of the evidence.

Petitioner filed a timely Petition for Review under §19(b-1) on November 13, 2009. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Appellate Court found the following facts:

Petitioner worked as a union cement mason for about 10 years as of his claimed injury in 2009. In October 2007, Petitioner began working for Respondent as a cement finisher foreman where he replaced sidewalks and handicap ramps.

Petitioner testified that on May 6, 2009, he noticed numbness in his hands up to his elbows and sharp pain in both shoulders as he was using a 12-inch grinder to grind a wall. Petitioner had been using a 15 to 20 pound grinder for four hours that day when he reported the pain. Petitioner added that he had to hold the grinder with two hands. Petitioner testified that he told his supervisor, Matt Kovalsky, about the pain and numbness. As of May 6, 2009, Petitioner had been grinding cement for about a week.

Petitioner testified that he had experienced similar pain symptoms in the fall of 2008 but did not report his issue or seek medical treatment. Petitioner explained he did not report his pain because in his "line of work, you get a lot of stress in your arms and legs and back, and I don't know if it was an injury or just because I was working so many hours and my body don't [sic] recuperate." In November 2008, Petitioner stopped working as part of a general lay off and his pain symptoms ceased while he was not working. However, when Petitioner returned to work in April 2009, the pain also returned. Petitioner continued to work until May 6, 2009, when he experienced so much pain that it interfered with his ability to work. Petitioner then reported his pain.

Respondent presented two witnesses who both testified they did not observe Petitioner showing any indication of pain while working. Bernadino Villasenor testified that he worked for Respondent for 25 years and was the operations manager. While he infrequently spoke to

Petitioner, Mr. Villasenor testified that Petitioner never mentioned any pain in his wrists or shoulders. Mr. Villasenor added that during his regular visits to the job site, he never noticed any indication that Petitioner was in pain or uncomfortable in any way. Mr. Kovalsky also testified at the hearing. He is a project manager for Respondent and saw Petitioner at least once a day. Before Petitioner reported his pain complaints on May 6, 2009, Mr. Kovalsky testified Petitioner never complained of numbness in his arms or wrists and never appeared to be in pain or discomfort while working.

When Petitioner reported his symptoms to Mr. Kovalsky, they discussed the origin of them. Mr. Kovalsky testified that when questioned, Petitioner denied hurting himself on the job. Mr. Kovalsky added that he told Petitioner that if he hurt himself at work, Petitioner needed to go to the clinic to be examined but Petitioner refused. Yet, during cross examination, Mr. Kovalsky admitted that he may have told Petitioner there was no need for him to go to the clinic. He also admitted to sending the following email to Mr. Villasenor on May 7, 2009:

I told him that typically for an injury, [Respondent] will either send you to Concentra or the emergency room. Seeing that this was not an emergency, there was really no reason for him to go. He asked me if this was something that [Respondent] would pay for or if he had to go through his own insurance. I replied with I don't know.

Petitioner did not return to work after May 6, 2009, through the date of the arbitration hearing. His treating physicians continually wrote Petitioner off work or gave him light duty restrictions. Petitioner was told he was not needed at work on May 7, 2009. Mr. Villasenor testified about a telephone conversation he had with Mr. Kovalsky on May 6, 2009. Mr. Kovalsky asked Mr. Villasenor if Petitioner was needed at work the next day, to which Mr. Villasenor replied no based on the weather forecast. Mr. Kovalsky then called Petitioner that evening to tell him that they would not be pouring concrete the next day and Petitioner was not needed at the work site. Mr. Kovalsky admitted on cross examination that other cement masons worked on May 7, 2009, but Petitioner was not needed. Mr. Villasenor also admitted on cross examination that typically the foreman worked if other cement masons were working.

Petitioner returned to the work site on May 7, 2009, asking Mr. Kovalsky if he could fill out an accident report. Mr. Kovalsky would not allow Petitioner to fill one out because they are to be completed immediately after an accident when an employee is injured on the job. Instead, Mr. Kovalsky gave Petitioner an incident report to fill out, which is to make a record of "an incident that may or may not have occurred on the job." Petitioner filled it out and wrote that he sustained a shoulder injury on May 6, 2009 due to the repetitive motion of grinding and chipping concrete.

Petitioner first sought medical treatment on May 7, 2009, with Dr. Marcotte, his primary care physician. Petitioner told Dr. Marcotte that he was a cement finisher and his job required

repetitive motions that strained his back and arms. Dr. Marcotte wrote in his initial report that Petitioner was seen for complaints of bilateral shoulder pain and that Petitioner had been performing the "same job over and over," which caused him pain radiating down into his hands. Dr. Marcotte diagnosed Petitioner with bilateral acromioclavicular strain and probable carpal tunnel syndrome bilaterally. Petitioner underwent an electromyogram on May 19, 2009. Dr. Bhasin wrote in his report that "the electrophysiological data obtained today is suggestive of bilateral median mononeuropathy at rest secondary to carpal tunnel syndrome, mainly by wrist-palm technique criteria only."

Dr. Marcotte saw Petitioner again on May 27, 2009. He noted that Petitioner still suffered from numbness and tingling in his first three fingers – his thumb and two fingers – on his hands bilaterally, and pain in his shoulders. Dr. Marcotte wrote that while Petitioner's symptoms had significantly improved, when Petitioner lifted his arms straight up or over his head, the pain returned. He diagnosed Petitioner with bilateral carpal tunnel syndrome and AC joint strain, and referred Petitioner to Dr. McComis, an orthopedic surgeon. Petitioner first visited Dr. McComis on June 1, 2009; he diagnosed Petitioner with bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel release surgery.

Petitioner then treated with Dr. Corcoran on June 24, 2009. Petitioner underwent x-rays and Dr. Corcoran wrote both shoulders showed type II and type III acromion with mild AC arthropathy. He then diagnosed Petitioner with bilateral rotator cuff tendonitis and bilateral carpal tunnel syndrome. Dr. Corcoran recommended Petitioner attend physical therapy to treat his rotator cuff tendonitis. He also recommended Petitioner have carpal tunnel release surgery on the right side first, as it was worse than the left. Once that side healed, Petitioner should have surgery on the left side. Dr. Corcoran performed right open carpal tunnel release surgery on Petitioner on June 29, 2009.

Dr. Rubinstein then treated Petitioner on July 29, 2009. His impression was that Petitioner suffered from bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis. Dr. Rubinstein also wrote in his notes that "in view of the repetitive motion activities of cement finishing which also involve a significant amount of forceful pushing and pulling, it would be my opinion that these problems are related directly to his workplace activities." Dr. Rubinstein performed Petitioner's left carpal tunnel release surgery on September 17, 2009.

At the arbitration hearing, senior investigator Daniel Lindblad testified for Respondent and Respondent submitted his video surveillance into evidence. Mr. Lindblad testified he has specific recollection of Petitioner because he observed so much activity during the surveillance, which he conducted over several days. The first day of surveillance, June 5, 2009, Mr. Lindblad testified he observed Petitioner running errands, pushing a shopping cart and carrying shopping bags. Mr. Lindblad then saw Petitioner return to his residence, where he removed two trailer tires from the back of his vehicle, jacked up the trailer and then changed the tires. He added that Petitioner did not appear to struggle while doing this. Finally, Mr. Lindblad observed Petitioner

remove a case of water from his vehicle, lift it onto his left shoulder and carry it into his residence.

Mr. Lindblad conducted surveillance again on June 8, 2009. He observed Petitioner load two "full size" suitcases into his car, drive to a church, remove two pieces of luggage from another car and place the luggage into his car. When Petitioner arrived at the church camp near Indianapolis, Mr. Lindblad saw Petitioner take the luggage out of his vehicle. Petitioner put one piece of luggage on his shoulder and carried the other pieces to the entrance. Mr. Lindblad observed Petitioner for a final time on August 14, 2009, when Petitioner was hosting a yard sale. Mr. Lindblad testified he saw Petitioner manually open his garage door and remove various items, such as tables, closet doors, lamps, large plastic containers, a large table umbrella and wood. Petitioner then set up the items and lifted them to show people.

Petitioner testified his medical treatment resolved his symptoms and pain. Petitioner testified he last worked for Respondent on May 6, 2009. While his pain began subsiding in late May or early June 2009, Petitioner stated his numbness did not decrease until he had surgery. He testified that before his surgeries, he found it difficult to perform daily tasks due to his hand numbness. Petitioner testified the surgery was successful in relieving the pain and symptoms in his hands. Petitioner added that the pain in his shoulders made it difficult to lift things. However, after completing a course of physical therapy, his shoulder pain resolved.

Based on the facts above, the Commission finds that Petitioner proved he sustained an accident arising out of and in the course of his employment with Respondent and that Petitioner's condition of ill being is causally connected to the work related accident. We further award Petitioner medical expenses and temporary total disability benefits. We decline to award Petitioner penalties and attorneys' fees.

Per the Appellate Court's statement of facts and directive in its holding, the Commission finds that Petitioner proved he suffered a work related accident. The Appellate Court found that "based on [Petitioner's] testimony and the treating notes of Dr. Marcotte, Dr. Bhasin, Dr. McComis, Dr. Corcoran, and Dr. Rubinstein, there is clear, indisputable evidence that [Petitioner] suffered from an injury to his shoulders, arms and hands." The Court noted that because nature and extent were not at issue, the surveillance evidence presented by Respondent was meant to suggest Petitioner did not suffer an accident at all. However, the Court pointed out that the medical evidence was completely uncontradicted as Respondent failed to present at medical evidence to rebut Petitioner's claim. The Appellate Court also found Petitioner's injury arose out of and in the course of his employment. The Court noted Petitioner traced his repetitive trauma injury to a "specific moment of collapse of his physical structure" on May 6, 2009, when the pain in his shoulders and the numbness in his hands became so severe it interfered with his ability to work. The Court again stressed that Petitioner's testimony and the consistent medical evidence were not negated.

In addition to finding that Petitioner proved he suffered a work related accident, we hold that his condition of ill being is causally connected to his work injury. Petitioner reported his injury on the day he was no longer able to work due to the pain and numbness in his hands and shoulders. Petitioner sought medical treatment with his primary care physician the next day. Petitioner then continually treated his conditions until he no longer experienced the same pain. Petitioner underwent bilateral carpal tunnel release surgery and post operative physical therapy for his wrists and physical therapy for his shoulders. These treatments significantly helped Petitioner as he is now pain free.

Further Petitioner's symptoms significantly subsided when he was not working for Respondent. Petitioner testified that he experienced similar symptoms when he worked through October 2008. Once Petitioner stopped working those symptoms subsided. He testified that he did not begin experiencing such symptoms until he returned to work in April 2009. That Petitioner only experienced pain in his shoulders and numbness in his hands while he was working his manual labor job strongly supports his condition being causally connected to his work. Like other manual laborers, Petitioner attempted to work through the pain and believed it was just soreness from the job and not an actual injury. Once Petitioner sought treatment, it became clear that he suffered from bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis due to his work for Respondent. After Petitioner stopped working due to his pain and numbness, his symptoms steadily improved with medical treatment. Petitioner eventually experienced full resolution of his symptoms, pain and numbness. Moreover, Respondent offered no other reason as to why Petitioner experienced such pain.

Furthermore, Dr. Rubinstein provided the only causation opinion of record. On July 29, 2009, Dr. Rubinstein wrote in his notes that "in view of the repetitive motion activities of cement finishing which also involve a significant amount of forceful pushing and pulling, it would be my opinion that these problems are related directly to his workplace activities." Petitioner's testimony as to his work, the onset of his symptoms, their improvement with time off work and ultimate recurrence and progression is consistent with his medical records. No contrary evidence was presented. Respondent did not offer any causation evidence that contradicted Dr. Rubinstein's opinion that causation existed.

Because Petitioner was able to work before the May 2009 manifestation date with minimal to no complaints of pain, suffered a work related accident, reported the accident on the same day, continually sought medical treatment and improved with such treatment, we find that Petitioner's condition of ill being is causally connected to his work related injury.

The Commission finds that Petitioner's average weekly wage is \$2,098.35. We included Petitioner's overtime hours in the average weekly wage calculation as he regularly worked overtime. Petitioner testified on May 6, 2009, he worked as a finisher foreman and as such was responsible to finish the work, even if the work day exceeded 8 hours. He added that his

overtime was required. Based on Petitioner's hourly wages and the pay stubs submitted, we hold that his average weekly wage is \$2,098.35.

We award Petitioner temporary total disability benefits for 32 weeks. Petitioner's repetitive trauma injury manifested itself on May 6, 2009, and he sought medical treatment on May 7, 2009. Dr. Marcotte gave Petitioner light duty work restrictions as of that visit. Petitioner then continually received off work or light duty restrictions from Dr. Marcotte, Dr. Corcoran and Dr. Rubinstein. Petitioner returned to work on December 16, 2009. He is entitled to temporary total disability benefits of \$1,231.41 per week for 32 weeks, representing the time period from May 7, 2009 through December 16, 2009.

The Commission further awards Petitioner medical expenses. Petitioner's medical treatment was reasonable and necessary, and not excessive. Petitioner visited several doctors, underwent surgery and participated in physical therapy. This treatment greatly benefitted Petitioner as he testified he no longer feels pain or numbness in his shoulders or hands. Petitioner is awarded his medical bills totaling \$37,276.32, per the medical fee schedule.

Finally, we decline to award Petitioner penalties or attorneys' fees. Respondent did not behave in an unreasonable or vexatious manner when it failed to pay Petitioner medical expenses or temporary total disability benefits. It relied on the Arbitrator's January 10, 2010, decision finding Petitioner did not prove he sustained a work related accident. Respondent reasonably relied on the Arbitrator's decision and hence penalties and fees are not awarded.

For the reasons stated above, the Commission finds Petitioner proved he suffered an accident arising out of and in the course of his employment and his condition of ill being is causally related to his work accident. We therefore award Petitioner temporary total disability benefits and medical expenses.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner proved he suffered a repetitive trauma accident arising out of and in the course of his employment with Respondent and that his condition of ill being is causally connected to that work related accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage is \$2,098.35.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$1,231.41 per week for a period of 32 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this

award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$37,276.32 for medical expenses under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

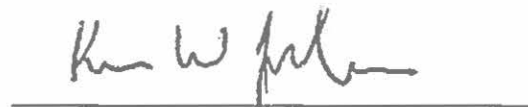
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT: kg
O: 8/19/13
51

MAR 14 2014


Thomas J. Tyrrell


Daniel R. Donohoo


Kevin W. Lamborn

David L. Gore

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse <u>Accident</u>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FELICIANO ITALIANO,

Petitioner,

vs.

NO: 09 WC 21532

RAUSCH CONSTRUCTION,

14IWCC0087

Respondent.

DECISION AND OPINION ON REMAND
FROM THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

This case comes before the Commission on remand from the Appellate Court of Illinois, First District, in case number 10 L 051017. On January 10, 2010, Arbitrator Black issued a decision finding that Petitioner failed to prove he suffered an accident arising out of and in the course of his employment with Respondent and did not award any benefits. On February 2, 2010, Petitioner filed section 19(e) special interrogatories asking the Commission five questions. On review, a majority of the Commission affirmed and adopted the Arbitrator's opinion, with one Commissioner dissenting. The Commission issued its decision on June 14, 2010. Petitioner then filed a motion with the Circuit Court on August 19, 2010, to set aside the Commission's decision and remand the case to the Commission with instructions to make findings in response to the section 19(e) interrogatories. The Circuit Court denied the motion on October 27, 2010. The Circuit Court heard the case and affirmed the Commission decision on April 6, 2011.

Petitioner timely appealed his case to the Appellate Court, which reversed and remanded it to the Commission on September 11, 2012. The Appellate Court held:

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Where the objective medical evidence established that the claimant sustained an injury and the sole causation opinion attributed the claimant's condition to the repetitive motions of his work, the Commission's decision that the claimant did not sustain injuries that arose out of and in the course of his employment is against the manifest weight of the evidence.

Petitioner filed a timely Petition for Review under §19(b-1) on November 13, 2009. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Appellate Court found the following facts:

Petitioner worked as a union cement mason for about 10 years as of his claimed injury in 2009. In October 2007, Petitioner began working for Respondent as a cement finisher foreman where he replaced sidewalks and handicap ramps.

Petitioner testified that on May 6, 2009, he noticed numbness in his hands up to his elbows and sharp pain in both shoulders as he was using a 12-inch grinder to grind a wall. Petitioner had been using a 15 to 20 pound grinder for four hours that day when he reported the pain. Petitioner added that he had to hold the grinder with two hands. Petitioner testified that he told his supervisor, Matt Kovalsky, about the pain and numbness. As of May 6, 2009, Petitioner had been grinding cement for about a week.

Petitioner testified that he had experienced similar pain symptoms in the fall of 2008 but did not report his issue or seek medical treatment. Petitioner explained he did not report his pain because in his "line of work, you get a lot of stress in your arms and legs and back, and I don't know if it was an injury or just because I was working so many hours and my body don't [sic] recuperate." In November 2008, Petitioner stopped working as part of a general lay off and his pain symptoms ceased while he was not working. However, when Petitioner returned to work in April 2009, the pain also returned. Petitioner continued to work until May 6, 2009, when he experienced so much pain that it interfered with his ability to work. Petitioner then reported his pain.

Respondent presented two witnesses who both testified they did not observe Petitioner showing any indication of pain while working. Bernadino Villasenor testified that he worked for Respondent for 25 years and was the operations manager. While he infrequently spoke to Petitioner, Mr. Villasenor testified that Petitioner never mentioned any pain in his wrists or shoulders. Mr. Villasenor added that during his regular visits to the job site, he never noticed any indication that Petitioner was in pain or uncomfortable in any way. Mr. Kovalsky also testified at

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the hearing. He is a project manager for Respondent and saw Petitioner at least once a day. Before Petitioner reported his pain complaints on May 6, 2009, Mr. Kovalsky testified Petitioner never complained of numbness in his arms or wrists and never appeared to be in pain or discomfort while working.

When Petitioner reported his symptoms to Mr. Kovalsky, they discussed the origin of them. Mr. Kovalsky testified that when questioned, Petitioner denied hurting himself on the job. Mr. Kovalsky added that he told Petitioner that if he hurt himself at work, Petitioner needed to go to the clinic to be examined but Petitioner refused. Yet, during cross examination, Mr. Kovalsky admitted that he may have told Petitioner there was no need for him to go to the clinic. He also admitted to sending the following email to Mr. Villasenor on May 7, 2009:

I told him that typically for an injury, [Respondent] will either send you to Concentra or the emergency room. Seeing that this was not an emergency, there was really no reason for him to go. He asked me if this was something that [Respondent] would pay for or if he had to go through his own insurance. I replied with I don't know.

Petitioner did not return to work after May 6, 2009, through the date of the arbitration hearing. His treating physicians continually wrote Petitioner off work or gave him light duty restrictions. Petitioner was told he was not needed at work on May 7, 2009. Mr. Villasenor testified about a telephone conversation he had with Mr. Kovalsky on May 6, 2009. Mr. Kovalsky asked Mr. Villasenor if Petitioner was needed at work the next day, to which Mr. Villasenor replied no based on the weather forecast. Mr. Kovalsky then called Petitioner that evening to tell him that they would not be pouring concrete the next day and Petitioner was not needed at the work site. Mr. Kovalsky admitted on cross examination that other cement masons worked on May 7, 2009, but Petitioner was not needed. Mr. Villasenor also admitted on cross examination that typically the foreman worked if other cement masons were working.

Petitioner returned to the work site on May 7, 2009, asking Mr. Kovalsky if he could fill out an accident report. Mr. Kovalsky would not allow Petitioner to fill one out because they are to be completed immediately after an accident when an employee is injured on the job. Instead, Mr. Kovalsky gave Petitioner an incident report to fill out, which is to make a record of "an incident that may or may not have occurred on the job." Petitioner filled it out and wrote that he sustained a shoulder injury on May 6, 2009 due to the repetitive motion of grinding and chipping concrete.

Petitioner first sought medical treatment on May 7, 2009, with Dr. Marcotte, his primary care physician. Petitioner told Dr. Marcotte that he was a cement finisher and his job required repetitive motions that strained his back and arms. Dr. Marcotte wrote in his initial report that Petitioner was seen for complaints of bilateral shoulder pain and that Petitioner had been performing the "same job over and over," which caused him pain radiating down into his hands. Dr. Marcotte diagnosed Petitioner with bilateral acromioclavicular strain and probable carpal

tunnel syndrome bilaterally. Petitioner underwent an electromyogram on May 19, 2009. Dr. Bhasin wrote in his report that "the electrophysiological data obtained today is suggestive of bilateral median mononeuropathy at rest secondary to carpal tunnel syndrome, mainly by wrist-palm technique criteria only."

Dr. Marcotte saw Petitioner again on May 27, 2009. He noted that Petitioner still suffered from numbness and tingling in his first three fingers – his thumb and two fingers – on his hands bilaterally, and pain in his shoulders. Dr. Marcotte wrote that while Petitioner's symptoms had significantly improved, when Petitioner lifted his arms straight up or over his head, the pain returned. He diagnosed Petitioner with bilateral carpal tunnel syndrome and AC joint strain, and referred Petitioner to Dr. McComis, an orthopedic surgeon. Petitioner first visited Dr. McComis on June 1, 2009; he diagnosed Petitioner with bilateral carpal tunnel syndrome and recommended bilateral carpal tunnel release surgery.

Petitioner then treated with Dr. Corcoran on June 24, 2009. Petitioner underwent x-rays and Dr. Corcoran wrote both shoulders showed type II and type III acromion with mild AC arthropathy. He then diagnosed Petitioner with bilateral rotator cuff tendonitis and bilateral carpal tunnel syndrome. Dr. Corcoran recommended Petitioner attend physical therapy to treat his rotator cuff tendonitis. He also recommended Petitioner have carpal tunnel release surgery on the right side first, as it was worse than the left. Once that side healed, Petitioner should have surgery on the left side. Dr. Corcoran performed right open carpal tunnel release surgery on Petitioner on June 29, 2009.

Dr. Rubinstein then treated Petitioner on July 29, 2009. His impression was that Petitioner suffered from bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis. Dr. Rubinstein also wrote in his notes that "in view of the repetitive motion activities of cement finishing which also involve a significant amount of forceful pushing and pulling, it would be my opinion that these problems are related directly to his workplace activities." Dr. Rubinstein performed Petitioner's left carpal tunnel release surgery on September 17, 2009.

At the arbitration hearing, senior investigator Daniel Lindblad testified for Respondent and Respondent submitted his video surveillance into evidence. Mr. Lindblad testified he has specific recollection of Petitioner because he observed so much activity during the surveillance, which he conducted over several days. The first day of surveillance, June 5, 2009, Mr. Lindblad testified he observed Petitioner running errands, pushing a shopping cart and carrying shopping bags. Mr. Lindblad then saw Petitioner return to his residence, where he removed two trailer tires from the back of his vehicle, jacked up the trailer and then changed the tires. He added that Petitioner did not appear to struggle while doing this. Finally, Mr. Lindblad observed Petitioner remove a case of water from his vehicle, lift it onto his left shoulder and carry it into his residence.

Mr. Lindblad conducted surveillance again on June 8, 2009. He observed Petitioner load two "full size" suitcases into his car, drive to a church, remove two pieces of luggage from

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Petitioner testified his medical treatment resolved his symptoms and pain. Petitioner testified he last worked for Respondent on May 6, 2009. While his pain began subsiding in late May or early June 2009, Petitioner stated his numbness did not decrease until he had surgery. He testified that before his surgeries, he found it difficult to perform daily tasks due to his hand numbness. Petitioner testified the surgery was successful in relieving the pain and symptoms in his hands. Petitioner added that the pain in his shoulders made it difficult to lift things. However, after completing a course of physical therapy, his shoulder pain resolved.

Based on the facts above, the Commission finds that Petitioner proved he sustained an accident arising out of and in the course of his employment with Respondent and that Petitioner's condition of ill being is causally connected to the work related accident. We further award Petitioner medical expenses and temporary total disability benefits. We decline to award Petitioner penalties and attorneys' fees.

Per the Appellate Court's statement of facts and directive in its holding, the Commission finds that Petitioner proved he suffered a work related accident. The Appellate Court found that "based on [Petitioner's] testimony and the treating notes of Dr. Marcotte, Dr. Bhasin, Dr. McComis, Dr. Corcoran, and Dr. Rubinstein, there is clear, indisputable evidence that [Petitioner] suffered from an injury to his shoulders, arms and hands." The Court noted that because nature and extent were not at issue, the surveillance evidence presented by Respondent was meant to suggest Petitioner did not suffer an accident at all. However, the Court pointed out that the medical evidence was completely uncontradicted as Respondent failed to present at medical evidence to rebut Petitioner's claim. The Appellate Court also found Petitioner's injury arose out of and in the course of his employment. The Court noted Petitioner traced his repetitive trauma injury to a "specific moment of collapse of his physical structure" on May 6, 2009, when the pain in his shoulders and the numbness in his hands became so severe it interfered with his ability to work. The Court again stressed that Petitioner's testimony and the consistent medical evidence were not negated.

In addition to finding that Petitioner proved he suffered a work related accident, we hold that his condition of ill being is causally connected to his work injury. Petitioner reported his injury on the day he was no longer able to work due to the pain and numbness in his hands and shoulders. Petitioner sought medical treatment with his primary care physician the next day. Petitioner then continually treated his conditions until he no longer experienced the same pain. Petitioner underwent bilateral carpal tunnel release surgery and post operative physical therapy

for his wrists and physical therapy for his shoulders. These treatments significantly helped Petitioner as he is now pain free.

Further Petitioner's symptoms significantly subsided when he was not working for Respondent. Petitioner testified that he experienced similar symptoms when he worked through October 2008. Once Petitioner stopped working those symptoms subsided. He testified that he did not begin experiencing such symptoms until he returned to work in April 2009. That Petitioner only experienced pain in his shoulders and numbness in his hands while he was working his manual labor job strongly supports his condition being causally connected to his work. Like other manual laborers, Petitioner attempted to work through the pain and believed it was just soreness from the job and not an actual injury. Once Petitioner sought treatment, it became clear that he suffered from bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis due to his work for Respondent. After Petitioner stopped working due to his pain and numbness, his symptoms steadily improved with medical treatment. Petitioner eventually experienced full resolution of his symptoms, pain and numbness. Moreover, Respondent offered no other reason as to why Petitioner experienced such pain.

Furthermore, Dr. Rubinstein provided the only causation opinion of record. On July 29, 2009, Dr. Rubinstein wrote in his notes that "in view of the repetitive motion activities of cement finishing which also involve a significant amount of forceful pushing and pulling, it would be my opinion that these problems are related directly to his workplace activities." Petitioner's testimony as to his work, the onset of his symptoms, their improvement with time off work and ultimate recurrence and progression is consistent with his medical records. No contrary evidence was presented. Respondent did not offer any causation evidence that contradicted Dr. Rubinstein's opinion that causation existed.

Because Petitioner was able to work before the May 2009 manifestation date with minimal to no complaints of pain, suffered a work related accident, reported the accident on the same day, continually sought medical treatment and improved with such treatment, we find that Petitioner's condition of ill being is causally connected to his work related injury.

The Commission finds that Petitioner's average weekly wage is \$2,098.35. We included Petitioner's overtime hours in the average weekly wage calculation as he regularly worked overtime. Petitioner testified on May 6, 2009, he worked as a finisher foreman and as such was responsible to finish the work, even if the work day exceeded 8 hours. He added that his overtime was required. Based on Petitioner's hourly wages and the pay stubs submitted, we hold that his average weekly wage is \$2,098.35.

We award Petitioner temporary total disability benefits for 32 weeks. Petitioner's repetitive trauma injury manifested itself on May 6, 2009, and he sought medical treatment on May 7, 2009. Dr. Marcotte gave Petitioner light duty work restrictions as of that visit. Petitioner then continually received off work or light duty restrictions from Dr. Marcotte, Dr. Corcoran and Dr. Rubinstein. Petitioner returned to work on December 16, 2009. He is entitled to

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temporary total disability benefits of \$1,231.41 per week for 32 weeks, representing the time period from May 7, 2009 through December 16, 2009.

The Commission further awards Petitioner medical expenses. Petitioner's medical treatment was reasonable and necessary, and not excessive. Petitioner visited several doctors, underwent surgery and participated in physical therapy. This treatment greatly benefitted Petitioner as he testified he no longer feels pain or numbness in his shoulders or hands. Petitioner is awarded his medical bills totaling \$37,276.32, per the medical fee schedule.

Finally, we decline to award Petitioner penalties or attorneys' fees. Respondent did not behave in an unreasonable or vexatious manner when it failed to pay Petitioner medical expenses or temporary total disability benefits. It relied on the Arbitrator's January 10, 2010, decision finding Petitioner did not prove he sustained a work related accident. Respondent reasonably relied on the Arbitrator's decision and hence penalties and fees are not awarded.

For the reasons stated above, the Commission finds Petitioner proved he suffered an accident arising out of and in the course of his employment and his condition of ill being is causally related to his work accident. We therefore award Petitioner temporary total disability benefits and medical expenses.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner proved he suffered a repetitive trauma accident arising out of and in the course of his employment with Respondent and that his condition of ill being is causally connected to that work related accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage is \$2,098.35.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$1,231.41 per week for a period of 32 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$37,276.32 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

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without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

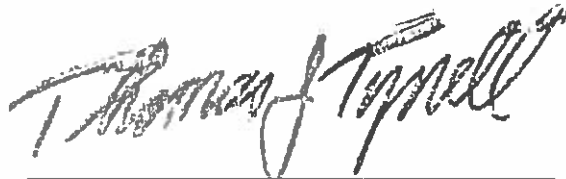
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 05 2014

TJT: kg

O: 8/19/13

51



Thomas J. Tyrrell



Daniel R. Donohoo



Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
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<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
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<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Buenaventura Colon,

Petitioner,

14IWCC0088

vs.

NO: 10 WC 03925

Lee Auto Parts,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of TTD and PPD and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Decision of the Arbitrator only to the extent that it increases the awarding PPD benefits to 4% loss of a person as a whole, finding this action appropriate given the injuries Petitioner sustained to his cervical and lumbar spine and complained of residual symptoms. The Commission declines to award greater benefits under Section 8(d)2 of the Act after viewing surveillance footage of Petitioner engaged in activities without any evidence of significant impairment.

The Commission notes the parties stipulated to the awarded TTD and medical benefits and finds no justification to disturb the stipulation.

The Commission affirms and adopts all other aspects of the Decision of the Arbitrator

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$214.43 per week for a period of 20 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 4% loss of a person as a whole.

14IWCC0088

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00 . The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 05 2014
KWL/mav
O: 12/17/13
42


Kevin W. Lamborn


Daniel R. Donohoo


Thomas J. Tyrrel

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0088

COLON, BUENAVENTURA

Employee/Petitioner

Case# **10WC003925**

LEE AUTO PARTS

Employer/Respondent

On 3/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2986 PAUL A COGHLAN & ASSOC PC
15 SPINNING WHEEL RD
SUITE 100
HINSDALE, IL 60521

4412 ACCIDENT FUND HOLDINGS INC
GRACE DiGERLANDO
200 W MADISON ST SUITE 3850
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION **14IWCC0088**

Buenaventura Colon

Employee/Petitioner

v.

Lee Auto Parts

Employer/Respondent

Case # 10 WC 03925

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **1/8/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 9/16/09, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$11,150.36; the average weekly wage was \$214.43.

On the date of accident, Petitioner was 18 years of age, *single* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$457.14 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$30,641.15 for medical benefits, for a total credit of \$31,098.29

Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

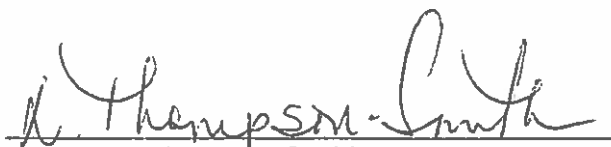
ORDER

The Petitioner has not proven, by a preponderance of the evidence, that his condition of ill-being, subsequent to April 1, 2010, is causally connected to the injury of September 16, 2009. The Arbitrator denies all medical benefits subsequent to April 1, 2010, pursuant to the Act.

The Respondent shall pay Petitioner \$213.33 for 10 weeks as permanent partial disability, as the injuries sustained have caused 2% loss of use of a man, pursuant to Section 8(d)(2) of the Act.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

March 18, 2013

14IWCC0088

BUENAVENTURA COLON

10 WC 003925

FINDINGS OF FACT:

The disputed issues in this matter are: 1) causal connection; 2) medical bills; and 3) nature and extent.

Petitioner's prior medical history is significant for bilateral pars intra-articularis at L5-S1 defect without spondylolisthesis; a red, swollen itchy left eye; and contusion of the right knee. In addition, the petitioner has a history of chest pain and cardiac consultation going back to February of 2002. *See*, notes of Dr. Carmen Sierra dated January 19, 2009; March 19, 2009, & September 8, 2009, in PX4.

On January 8, 2013, the petitioner testified that he is 21 years old and is currently employed as a "parts" sales manager for Auto Zone; where he has worked for the past three (3) years. He further testified that he was a high school graduate and had attended eight (8) months of automotive schooling, at Lincoln Technical College.

The petitioner testified that, on September 16, 2009, he was eighteen (18) and employed by Lee Auto Parts ("Respondent") as a driver. While making his last delivery on September 16, 2009, his vehicle was struck on the passenger's side, by an oncoming vehicle when he was making a left hand turn; and it flipped over. The petitioner testified that paramedics cut him out of his vehicle and he was taken to the Glenbrook Hospital following his accident. X-rays were taken of his left elbow, left femur and his chest. They were all negative and he was given a prescription for Hydrocone. His primary diagnosis was Cervicalgia with spasm of muscle; and lumbago. *See*, PX4.

He further testified that he returned to work for the respondent approximately two (2) weeks after his accident and continued to work for approximately four more months. Since his injury, the petitioner testified that he had problems with lifting, but Flexeril helped a little.

The petitioner testified that it has been recommended that he undergo a fusion, but he was undecided about proceeding with surgery as it could make him worse. The petitioner testified that he had never completely stopped taking medications between 2009 and 2013 and that he currently took Tylenol and Naproxen and that Dr. Sierra was prescribing his Naproxen. The petitioner testified that physical therapy helped his neck but that he could not lift more than ten (10) pounds as it put too much pressure on his lower back. He testified that he utilized a back

belt and could no longer play basketball, football or run. The petitioner testified that he took Tylenol at work and it relieved his pain and allowed him to sit and stand longer.

The petitioner recalled being examined by Dr. Andersson in April of 2010 and that he was examined for approximately twenty-five (25) minutes. The petitioner testified that Dr. Andersson also examined him in October of 2011 and that examination lasted approximately five (5) minutes.

On cross-examination, the petitioner testified that he quit his job with the respondent company in March of 2010 to accept a position as an usher at U.S. Cellular Field, where he worked for approximately 3 months. He then went to work for Auto Zone. He testified that his hours, while working at U.S. Cellular Field, varied dependent upon the game schedule, but he generally worked four (4) to five (5) hours per week. He testified that his job as an usher required him to stand and walk at all times. The petitioner further testified that he had not sought treatment with any physicians other than Drs. Sierra, Pahwa, Vargas, Riera, and Erickson, relative to his accident of September 16, 2009. He testified that he had group medical insurance and has had it from 2009 through the date of this trial.

On cross-examination, the petitioner testified that upon examination by Dr. Andersson, he answered all of his questions honestly and advised Dr. Andersson of his complaints. He testified that he was aware that in April of 2010, Dr. Andersson recommended that he undergo an additional period of physical therapy, at a facility other than the Rehab Team. The petitioner testified that he did not attend physical therapy between March of 2010 and July of 2011 and that he was aware that Dr. Andersson did not believe that he required a fusion.

In addition, on cross-examination, the petitioner testified that his pain was currently in his back. He testified that he had a civil suit pending regarding the motor vehicle accident of September 16, 2009. The petitioner testified that he currently took two (2) Tylenol at a time, which would relieve his pain for three (3) to four (4) hours and allow him to sit or stand for four (4) to five (5) hours.

On re-direct examination, the petitioner testified that he did not attend additional therapy after his examination with Dr. Andersson in April of 2010 because the workers' compensation carrier would not authorize it and that his group insurance carrier would not pay for his treatment because his injury was work related. On re-cross examination, the petitioner testified that he only attempted to undergo physical therapy at the Rehab Team and no other facility, between March of 2010 and July of 2011.

On September 17, 2009, he presented to Saints Mary and Elizabeth Medical Center (the "Center"), complaining of pain from his neck to his buttocks. He also testified that he had

sustained minor cuts and bruises to his arm, but they resolved without issue. The petitioner was seen by Dr. Sierra, who referred him to Dr. Pahwa; who diagnosed him as having cervical, lumbar and coccyx strains. *See*, PXs 4 & 8.

On September 20, 2009, the petitioner was evaluated at the Center's emergency room. He complained of numbness and pain in the left arm and neck. The petitioner was diagnosed as having cervical radiculopathy. It was noted that he was allergic to Naproxen. *See*, PX7.

On September 29, 2009, the petitioner underwent a cervical MRI, which exhibited reversal of the cervical lordosis, which "could be seen in muscle spasm." No structural derangement was otherwise noted and there were no herniated discs or fractures. *See*, PX4.

On October 2, 2009, Petitioner presented to Dr. Carmen Sierra for modalities of cervical/lumbar traction. Dr. Sierra stated that Petitioner had recovered sufficiently to return to light/regular work duties. *See*, Disability Certification dated October 2, 2009 in PX4. Dr. Sierra ordered physical therapy for the petitioner at Rehab Team Physical Therapy.

On October 8, 2009, petitioner presented to Dr. Mohammed Ibrahim, for physical therapy, to treat Petitioner's low back pain (lumbago), cervicgia and muscle spasm. Petitioner returned for physical therapy from October through the end of April, 2010 and was placed on limited duties, with restrictions of lifting no more than 10 pounds and sitting/driving for no more than four hours.

Petitioner was again referred to Dr. Pahwa on October 29, 2009; and also Petitioner returned for a follow-up to Dr. Sierra on November 12, 2009 with continued complaints of back pain.

Petitioner presented to the Center on December 10, 2009, for lumbar x-rays. Reportedly, the x-rays exhibited bilateral spondylosis at L5 without evidence of spondylolisthesis, the same findings were noted on a prior lumbosacral study of January 19, 2009, i.e. the x-ray results from January 19, 2009 reportedly exhibited L5-S1 spondylolisthesis with no significant spondylolisthesis and a bilateral pars intra-articularis at L5-S1. *See*, PX4.

On February 2, 2010, the petitioner was evaluated by Dr. Prem Pahwa, complaining of pain in the back and right knee and "some stiffness" in the neck. Upon examination, the petitioner was noted to have mild tenderness in the lumbosacral area. Back motions were noted to be "fairly good." Straight leg raise was to 75 degrees bilaterally and his Lasague sign was negative. There was no weakness of the lower extremities, no sensory deficit and reflexes were present at the knees and ankles. Lumbar x-rays dated December 10, 2009 were reviewed. Dr. Pahwa diagnosed the petitioner with a lumbosacral strain with pre-existing spondylolysis at L5. A right knee MRI was prescribed. *See*, PX 4; RX 1.

Petitioner returned for physical therapy re-evaluation on December 24, 2009; a plan of care was set and he continued with treatment. Respondent recommended that the petitioner find an orthopedic doctor on January 5, 2010. At this time, he was on light duty.

Petitioner presented to Dr. Prem Pahwa on February 2, 2010, describing pain in his back and right knee and stiffness in his neck. Dr. Pahwa diagnosed petitioner with a lumbosacral strain with pre-existing spondylolysis at L5. He recommended an MRI of the right knee to determine where pain was coming from.

On February 25, 2010, the petitioner was ordered to continue physical therapy and re-evaluation. Petitioner tested positive for the cervical compression test and the Lasegue test, indicating nerve root irritation/inflammation and a lumbar lesion.

An MRI of petitioner's right knee was performed at the Center on March 13, 2010; the results of which were normal.

On April 1, 2010, Petitioner presented for an IME with Dr. Gunnar Andersson, at the request of the respondent. Dr. Andersson concluded at that time that petitioner was suffering from cervical and lumbar contusions and recommended that the petitioner's physical therapy plan be revised.

The petitioner attended physical therapy at Rehab Team from October of 2009 to April 17, 2010. The last Progress/Treatment Note from Rehab Team dated April 17, 2010, notes that the petitioner had returned the "demo of home exercise program correctly and independently." It was noted that the "Long Term Goal" of ambulation was improved to the "maximal level of function" and had been met. *See*, PX6.

There was a six-month gap in treatment. Then on October 14, 2010, the petitioner was seen by Dr. Sierra relating to low back pain. X-rays were taken and reported to be normal. On October 21, 2010, 200 mg of Advil, 2 times per day was prescribed by Dr. Sierra. *See*, PX4.

Then there is an eight (8) month gap in treatment. On July 14, 2011, Dr. Rogelio Riera evaluated the petitioner, reporting the same mechanism of injury and complaining of "off and on" neck pain. Examination of the neck revealed pain on palpation at the insertion of the para-cervical muscles; with some limitation of flexion and extension, due to pain. There was minimal pain on palpation of the lumbar area and no muscle spasm. Motor and sensory skills of the lower extremities and deep tendon reflexes were normal. Dr. Riera diagnosed the petitioner with "chronic back pain, possibly related to injuries that he suffered years back and sprain/strain of the lumbar spine." *See*, PX5.

On July 19, 2011, the petitioner underwent a lumber MRI, which exhibited bilateral non-displaced pars defect at L5-S1; with minimal disc bulging at that level with no stenosis or misalignment. The petitioner also underwent a cervical MRI on that date, which exhibited straightening of the cervical spine. *See*, PX5.

On July 21, 2011, the petitioner returned to Dr. Riera and an EMG and physical therapy were prescribed. On July 26, 2011, the petitioner underwent EMG/NCV studies, which exhibited mild right L5-S1 radiculopathy. *See*, PX5.

On August 18, 2011, Dr. Riera reviewed the EMG/NCV study, which revealed mild right L5-S1 radiculopathy. Due to said findings as well as petitioner's persistent pain, he was referred to Dr. Vargas, a pain specialist. Physical therapy and Flexeril were prescribed. *See*, PX5.

On August 19, 2011, the petitioner attended therapy at Premier Physical Therapy. It was noted that he transferred his care to that clinic for "convenience reasons" due to the facility's location in relation to his home and to avoid missing time from work. *See*, PX5.

On August 31, 2011, Petitioner presented to Dr. Axel Vargas, a pain management doctor, at the Gold Coast Surgicenter; a facility associated with Michigan Avenue Medical Associates, on referral from Dr. Riera. Petitioner described his pain as "electric-like shooting" which began in his mid and distal lower back and then radiated down his right buttock and lower extremity. Petitioner also reported having stiffness in his neck. Dr. Vargas concluded that Petitioner might be suffering from mild lumbosacral spondylosis and minimal disc disease; which may be causing radicular symptoms. Dr. Vargas administered an epidural steroid injection at this time and Petitioner was advised that he could work in a full duty capacity.

On September 14, 2011, the petitioner again presented to Dr. Axel Vargas and was assessed as having lumbar radiculopathy. Dr. Vargas administered a nerve root block/transforaminal epidural steroid injection. Between September 14, 2011 and October 26, 2011, the petitioner underwent three transforaminal lumbar epidural steroid injections at L5-S1. On November 9, 2011, Dr. Vargas referred the petitioner to Dr. Erickson. *See*, PX5.

Petitioner returned to Dr. Gunnar Andersson on October 25, 2011, for an IME re-evaluation. Petitioner indicated that he had returned to employment but was still experiencing low back pain. Dr. Andersson concluded that petitioner's condition was not work related and stated that Petitioner's treatment up through April of 2010 was reasonable and necessary but that any treatment afterwards is not related. The doctor released Petitioner to return to work in a full duty capacity and advised that no further treatment was necessary.

14IWCC0088

Petitioner followed up with Dr. Vargas on October 26, 2011, for a repeat steroid injection. On November 9, 2011, Petitioner returned to Dr. Vargas who again recommended a discogram and referred petitioner to Dr. Robert Erickson, a neurosurgeon.

On November 16, 2011, Dr. Erickson recommended that a diagnostic discography be performed. On November 30, 2011, the petitioner underwent a L3-S1 provocative lumbar discogram and post-discography CT. The discogram showed that petitioner had a nuclear cavity degeneration with disc protrusion and associated annular tear. The post-operative CT Scan showed grade 3 tears at L3-4 and L4-5 as well as a grade 4 tear at L5-S1. On December 5, 2011, Dr. Erickson recommended that the Petitioner proceed with an instrumented fusion at L5-S1. See, PX5.

Petitioner returned to Dr. Vargas on December 7, 2011, and according to his report, the discography confirmed that the origin of most of the petitioner's pain was stemming from the L5-S1 segment of his back. At that time, Dr. Vargas again indicated that the petitioner was capable of full duty work and did not need therapy. He stated petitioner should consider undergoing a surgical decompression or intra-distal disc decompression with respect to the L5-S1 radicular symptoms. Petitioner was advised to return to Dr. Erickson.

On December 9, 2011, Petitioner presented to Dr. Robert Erickson and he concluded that Petitioner should undergo a right-sided L5-S1 fusion and attributed his condition and need for surgery to his car accident on September 16, 2009.

Dr. Erickson, the treating board-certified neurosurgeon, testified by way of evidence deposition that the petitioner was a candidate for an L5-S1 fusion and that this surgery, as well as all of the aforementioned medical treatment and therapy, was related to the work accident. Dr. Erickson relied on the discogram findings as well as a "small disruption seen on the MRI. He also reviewed Respondent's IME report and the opinions of Dr. Anderson; as well as the surveillance video report of the petitioner. Dr. Erickson testified that Dr. Anderson's basis for opining there was no need for surgery was "nonsensical." As for the surveillance performed, Dr. Erickson testified that the video showed what the petitioner told him he was doing on a daily basis and that it did not present new information or change his recommendations for surgical intervention. See, PX2 at pgs. 14-15.

Respondent's IME physician Dr. Anderson, a board certified orthopedic physician, specializing in back and neck disorders, also testified by way of evidence deposition. Dr. Anderson testified that he examined the petitioner on April 1, 2010 and had reviewed records from Glenbrook Hospital, the Center and Dr. Pahwa. He also testified that upon examination, Petitioner walked normally but slowly and had a normal posture and opined that the petitioner did not sustain any permanent disability as a result of the subject accident; no longer had symptoms from the subject accident; did not require further treatment or surgery and had reached maximum

medical improvement ("MMI"). He thought that the petitioner's medical treatment had been reasonable and necessary up to the point when he examined him, i.e. April 2010. Petitioner had returned to work and had not had any treatment in approximately fifteen (15) months.

Two dates of surveillance conducted of the petitioner in 2012 were admitted into evidence. The surveillance footage is approximately 1 hour and 25 minutes long and exhibits the petitioner working on an automobile, carrying an infant in an infant carrier, walking, bending, lying on the ground, kneeling, squatting, utilizing tools, using a manual jack, etc. *See*, RX Group 3.

CONCLUSIONS OF LAW:

F. Is the Petitioner's present condition of ill-being causally related to the injury?

The burden lies with the claimant to establish the elements of his right to compensation. *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill.App.3d 438, 443, 761 N.E.2d 768, 773, 260 Ill.Dec.585, 590 (4th Dist. 2001) (citing *Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill.App.3d 1103, 1106, 204 Ill.Dec. 354, 641 N.E.2d 578, 581 (1994)). This includes the burden of proving the existence of a causal relationship between the injury and the condition of ill-being. See, *Beattie v. Industrial Comm'n*, 276 Ill.App.3d 446, 449, 657 N.E.2d 1196, 1199, 212 Ill. Dec. 851, 854 (1st Dist. 1995). The mere existence of testimony does not require its acceptance. See, *Bernard v. Industrial Commission*, 25 Ill.2d 254, 184 N.E.2d 864 (1962).

After weighing the evidence in this case, the Arbitrator concludes that the petitioner established that he sustained lumbar, cervical and coccyx contusions and strains that arose out of and in the course of his employment with the respondent, on September 16, 2009. In forming this opinion, the Arbitrator relies upon the medical records and the opinion of Dr. Gunnar Andersson. The Arbitrator finds that the petitioner has failed to prove, by a preponderance of the evidence, a causal connection between his medical condition subsequent to April 1, 2010; and his injury of September 16, 2009; and therefore finds that the petitioner's recommended need for a L5-S1 fusion, is not causally related to his injury of September 16, 2009; and that such a procedure, is not reasonable or necessary.

Between September 16, 2009 and April 2, 2010, the petitioner was evaluated at the emergency room, by his family physician, Dr. Sierra; also by an orthopedic surgeon, Dr. Pahwa and by the IME orthopedic surgeon, Dr. Gunnar Andersson. The emergency room records confirm a diagnosis of arm and leg pain. Drs. Sierra and Andersson's records confirm a diagnosis of cervical, coccyx and lumbar sprains and Dr. Pahwa's records confirm a diagnosis of a lumbosacral strain. There is also some evidence of pre-existing L5 spondylosis contained within the medical records. The Arbitrator notes that despite multiple examinations and diagnostic tests, for several months, the petitioner was not diagnosed with anything more significant than contusions and strains; and no invasive treatment was recommended.

Subsequent to April of 2010, the petitioner did not seek medical treatment for an extended period. Per his testimony, the petitioner claimed that he failed to seek any such follow-up treatment because it was denied and his group carrier would not authorize it. The petitioner's testimony is not supported by the medical records submitted into evidence. The petitioner admitted that he was aware that Dr. Andersson recommended that he cease obtaining physical therapy with the Rehab Team and attend therapy at another facility. The petitioner testified that

he did not attempt to attend therapy at any facility other than the Rehab Team until July of 2011, in excess of one year after Dr. Andersson's recommendation.

Other than his examination with Dr. Andersson on April 1, 2010, the medical records evidence that the petitioner did not see a physician again until September 24, 2010; when he was evaluated by Dr. Sierra regarding rashes. Dr. Sierra's report of September 24, 2010, does not note any lumbar or cervical issues.

On October 21, 2010, Dr. Sierra's notes evidence that the petitioner complained of back pain and 200 mg of Advil was prescribed. No further treatment was recommended by Dr. Sierra and, per the subpoenaed records, the petitioner did not seek additional medical treatment nor was any treatment recommended until July 14, 2011; when he was evaluated by Dr. Riera. The Arbitrator notes that the Commission has previously denied benefits based upon a lack of causal connection when there is a significant delay in receiving treatment or a significant gap in treatment. *See, Gonzalez v. J.F. Daley International*, 94 WC 23862, 99 IIC 3121; *Bauer v. E M Wiegman* 98 WC 39838, 02 IIC 0839; *Mercado v. Trak Auto*, 99 WC 61550, 02 IIC 0412; *Day v. Danville Housing Authority* 10 WC 22490, 11 I.W.C.C. 0537. The Arbitrator finds that the petitioner's gaps in treatment from April 1, 2010 through October 14, 2010; and from October 21, 2010 through July 11, 2011; and again from December 9, 2011 through the date of trial to be significant and inexplicable as the petitioner is attempting to related to his current condition of ill-being to the subject accident.

The Arbitrator notes that the recommendation for additional medical treatment, including a lumbar fusion, came after nearly approximately a year-long gap in medical treatment. The Arbitrator notes that a recommendation for a lumbar fusion was not made until the petitioner underwent a lumbar discogram in November of 2011, more than two years after the petitioner's date of injury. Said recommendations also came after the petitioner had returned to full duty work and had been working in such capacity for two different employers, for approximately a year and a half.

Additionally, said recommendations were made in the face of "normal" neurological examinations and diagnostic tests. Per Dr. Erickson's testimony, the petitioner's neurological examination was "very good" and the recommendation for fusion was being made for "surgical pain treatment, in essence." If the petitioner was not symptomatic, Dr. Erickson testified that he would not perform a fusion and again, the fusion was for pain treatment. The Arbitrator notes that Dr. Andersson also cautioned against performing a fusion on an individual as young as the petitioner without a very specific indication and Dr. Erickson also testified that fusions are not often performed on individuals under the age of twenty-five (25). In addition, the Arbitrator takes notice of Petitioner's previous medical history, which is significant for bilateral pars intra-articularis at L5-S1 defect without spondylolisthesis.

The Arbitrator finds the opinions of Dr. Andersson to be more compelling than that of Dr. Erickson. Furthermore, she finds Dr. Andersson's opinions to be more persuasive than those of Drs. Riera and Vargas.

In accordance with Dr. Andersson's opinions, the Arbitrator finds that the petitioner reached a state of MMI without need for additional treatment, by late April or early May of 2010. Dr. Andersson took specific note of the petitioner's gaps in medical treatment and testified that the petitioner's pain complaints in October of 2011 were different than those he reported upon examination in April of 2010. Dr. Andersson testified that in October of 2011, the petitioner complained of "pain from the neck to the lower back and that pain was the worst possible." Additionally, 5 pain diagrams completed at the Michigan Avenue Medical Associates, between September 14, 2011 through December 7, 2011, evidence the petitioner having pain and/or numbness from the base of his skull to the base of his spine and down the front and sides of his bilateral legs from the upper thigh region to the ankles. Dr. Andersson testified that the petitioner's pain complaints did not match any known spine disorder and he believed the petitioner was malingering. Furthermore, Dr. Andersson testified that he did not believe the petitioner's pain was emanating from L5-S1 and believed it would be a "mistake" to perform a fusion on the petitioner.

The Arbitrator also notes that critical to the determination of causal connection is the petitioner's credibility and the weight of his testimony depends upon the same. Once the petitioner's credibility is questioned, the concept of truthfulness becomes critical. The Arbitrator notes that compensation has been denied by the Commission and affirmed by the Courts in numerous instances, when the claimant's credibility was suspect and contemporaneous medical histories conflicted with and/or failed to corroborate the claimant's testimony. *See, Elliott v. Industrial Commission*, 303 Ill.App.3d 185, 707 N.E.2d 228 (1999); *McRae v. Industrial Commission*, 285 Ill.App.3d 448, 674 N.E.2d 512 (1996); *Banks v. Industrial Commission*, 134 Ill.App.3d 312, 480 N.E.2d 139; *Luby v. Industrial Commission*, 82 Ill.2d 353, 412 N.E.2d 439 (1980). Furthermore, when an Arbitrator finds that a petitioner has not been truthful on a particular issue, the Arbitrator may then find the petitioner is not credible as to other issues. *See, Parro v. Industrial Commission*, 167 Ill.2d 385, 657 N.E.2d 882 (1995).

Although the Arbitrator has already provided several bases for finding that the petitioner's condition, subsequent to April 1, 2010, was not causally related to his work injury, the Arbitrator notes certain significant discrepancies in the petitioner's testimony and his medical records; which calls the petitioner's credibility into question.

At the time of trial, the petitioner testified that his current medications were Tylenol and Naproxen and that his Naproxen was being prescribed by Dr. Sierra. He further testified that he had not been medication free since the date of his injury. Subpoenaed medical records from Dr.

Sierra, the Glenbrook Hospital, the St. Mary and Elizabeth Medical Center and the Gold Coast Surgery Center all state that the petitioner is allergic to Naproxen. Additionally, there are no prescriptions contained within Dr. Sierra's subpoenaed records subsequent to October of 2010 when 200 mg of Advil was prescribed for the petitioner. The only other prescription contained within the records is a prescription for Advil and Flexeril written by Dr. Riera on August 18, 2011. The Arbitrator finds it incredible that the petitioner's primary care physician would prescribe a medication, i.e. Naproxen, that the petitioner's medical records clearly stated that he is allergic to and that said prescription would not be contained within his medical records. Although the Arbitrator believes it is probable that the petitioner takes over the counter Tylenol on occasion, she questions his testimony regarding his use of Naproxen.

The petitioner testified that following his motor vehicle accident on September 16, 2009, he was removed from his vehicle by paramedics. Medical records from the Glenbrook hospital state that the petitioner self extracted from his vehicle; they reflect a history that the petitioner climbed out of the window of his vehicle, laid on the ground, and waited for help. Again, the petitioner's credibility is called into question.

The Arbitrator notes that Dr. Erickson's records and his testimony reflect that according to the petitioner, he was limited to brief periods (i.e. five minutes) of standing, walking and sitting. Dr. Erickson also testified that the petitioner had to work in "very brief spurts." The petitioner testified that he was not capable of lifting more than ten (10) pounds, as it put too much pressure on his lower back. The petitioner did testify that he could sit or stand for 4 or 5 hours, if he took Tylenol. The Arbitrator notes that surveillance footage of the petitioner, taken in 2012, evidences him being capable of lifting more than ten (10) pounds, that he is clearly capable of walking and standing for more than five minutes at a time; and that he is capable of working for more than a "brief spurt." The Arbitrator notes that the surveillance footage evidences the petitioner being far more physically capable than his treating physician was led to believe.

The Arbitrator finds that the petitioner failed to prove, by a preponderance of the evidence, that his condition of ill-being subsequent to April of 2010, is causally related to his injury of September 16, 2009. The Arbitrator relies on the testimony of Dr. Andersson and the treating records of Drs. Sierra and Pahwa and finds that the petitioner sustained lumbar, cervical and coccyx strains and contusions as a result of his injury of September 16, 2009. In reaching this conclusion the Arbitrator also takes special notice of the following: 1) the petitioner missed two weeks and one day of work following his accident; 2) the petitioner returned to full duty work and continued working, in a full duty capacity full duty through the date of his trial, i.e., the evidence reflects that the petitioner was only authorized off work for ten (10) days and was placed on light duty restrictions for a brief period of time; 3) the significant gaps in medical treatment; 4) the inconsistencies contained within the petitioner's testimony and the evidence presented at trial; and, 5) the surveillance footage of the petitioner wherein *inter alia*, he is

fixing a car bending over in the hood, for four to five minutes at a time; laying on the ground under the car for four to five minutes and getting out-from-under the car with no apparent distress. After reviewing the evidence in its entirety, the Arbitrator adopts the opinions of Dr. Andersson and finds no causal connection between the petitioner's condition of ill being subsequent to April 1, 2010 and his injury of September 16, 2009.

J. Were the medical services that were provided to the Petitioner reasonable and necessary and has Respondent paid all appropriate charges?

The petitioner claims that he is entitled to payment of outstanding medical charges in the amount of \$54,185.83 for services received from 1) Gold Coast Surgicenter, Michigan Avenue Medical Associates; 2) Archer Open MRI, River North Pain Management Consultants; 3) Premier Therapy; 4) Gray Medical, Preferred Open MRI; and 5) Way Hoo Det Med, SC. The Arbitrator notes that the aforementioned services were incurred by the petitioner subsequent to April 1, 2010. As the Arbitrator finds that there is no causal connection between the petitioner's condition of ill being subsequent to April 1, 2010 and his injury of September 16, 2009, the Arbitrator finds that the respondent is not liable for the payment of the aforementioned medical services.

The invoice from the Rehab Team submitted into evidence at the time of trial reflected a balance of \$14,035.00 and the parties stipulated that the respondent had paid \$12,373.23 of this invoice and that the respondent believed that Rehab Team's invoice had been paid, in its entirety pursuant to the fee schedule. The parties stipulated that if any portion of Rehab Team's remaining invoice of \$1,661.77 remains due and owing. Per the fee schedule the respondent will be liable for the payment of the same.

L. What is the nature and extent of the injury?

After weighing the evidence in this case, the Arbitrator concludes that the petitioner established that he sustained lumbar, cervical and coccyx contusions and sprains that arose out of and in the course of his employment with the respondent on September 16, 2009. In forming this opinion, the Arbitrator relies upon the opinion of Dr. Gunnar Andersson and the petitioner's medical records. The Arbitrator finds that the petitioner sustained permanent partial disability to the extent of 2% loss of use of a man pursuant to Section 8(d)(2) of the Act. Therefore, the petitioner is entitled to receive a total of ten (10) weeks of permanent partial disability benefits at \$213.33 per week.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

14IWC0089

Jeff Whitley,

Petitioner,

vs.

NO: 11 WC 44162

City of DuQuoin,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 16, 2013 is hereby affirmed and adopted.

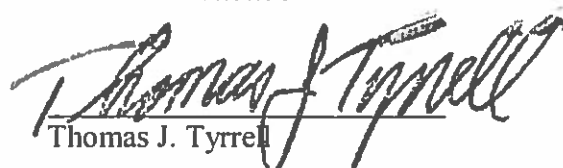
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 05 2014
KWL/vf
O-1/14/14
42


Daniel R. Donohoo


Thomas J. Tyrrell

141WCC0089

DISSENT

I respectfully dissent from the majority's decision affirming and adopting the Arbitrator's decision. I respectfully find that the Arbitrator failed to explain the relevance and weight of the factors for determining the level of permanent partial disability per Section 8.1b.

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b (b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerate factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factor used in addition to the level of impairment as reported by the physician must be explained in a written order.

In applying this standard to Petitioner's claim, the Arbitrator awarded Petitioner 25% MAW and noted as follows:

(i): Dr. Petkovich assessed P's level impairment as 9% person as a whole per AMA guidelines.

(ii): Petitioner is employed as a supervisor in water and sewer dept. which is same job he held before.

(iii): Petitioner was 40 years old as of the date of loss.

(iv): Petitioner has returned to his pre-injury job, and no evidence of loss of earning capacity.

(v): Petitioner sustained a C5-6 disc herniation which was addressed via cervical spine fusion at C5-6.

The Arbitrator noted that Petitioner had cervical spine fusion, followed by physical therapy and rehabilitation, then return to work, regular duty, and that an award of 25% man as a whole was warranted. However in reaching his conclusion on nature and extent, the Arbitrator failed to discuss and explain the weight of the factors used in addition to the level of impairment reported by Dr. Petkovich.

Accordingly, I would find these relevant factors and assign weight as follows:

Under subsection (i), only one Section 8.1b report was tendered into evidence. This report authored by Dr. Petkovich, found Petitioner's AMA rating to be 9% impairment of whole person; this evidence is uncontroverted and should be assigned significant weight:

Under subsection (ii), Petitioner was employed as a water & sewer supervisor performing strenuous laboring duties and supervising others. He returned to those same work duties, but with permanent work restrictions of no lifting over 70 lbs per his functional capacity

14IWC0089

evaluation and per his surgeon, Dr. Fonn; Petitioner testified that he requires assistance with heavy weights at times; Petitioner's testimony as to his work duties before and after his accident is uncontroverted and corroborated in the medical records; Petitioner is capable of a full duty return to work but with permanent weight restrictions; accordingly, Petitioner's job should have some weight in determining his level of PPD as his condition has somewhat affected his ability to work in a full duty capacity as a working supervisor, and minimal increase in PPD is warranted as Petitioner is able to perform his full duty work albeit with permanent weight lifting restrictions;

Under subsection (iii), there is no dispute Petitioner was 40 years old on the date of accident, this should be assigned some weight as Petitioner is a relatively younger individual, and sustains a PPD moderately greater than that of an older individual because Petitioner will have to live with effects of his injury for a longer period of time.


No evidence was introduced by either party regarding Petitioner's future earning capacity, subsection (iv). Petitioner testified that he returned to his prior position after being released to full duty work by Dr. Fonn. Accordingly no weight should be assigned to this factor as there is no evidence of any impact whatsoever on Petitioner's future earning capacity.

Finally, the treating medical records reflect that Petitioner underwent conservative medical treatment prior to the C5-6 anterior microdiscectomy. Thereafter, Petitioner's cervical condition gradually improved through July 18, 2012, when he was released to full duty work by Dr. Fonn. In conjunction with that release to full duty Petitioner underwent an FCE which placed him at the medium to heavy physical demand level, consistent with his usual occupation; As of Petitioner's last office visit with Dr. Fonn on July 18, 2012, it was noted Petitioner's exam was unchanged from his prior visit and office exam of June 20, 2012 wherein it was revealed that Petitioner had made good progress in physical therapy, and had increased mobility significantly with substantial reduction in pre-op symptoms; there were normal neurological findings; and Petitioner was pleased with his progress. Petitioner has worked a full duty position since his release on July 18, 2012 and incurred no further medical care since then, that being a period of 9 months. Respondent's section 12 exam conducted on November 8, 2012, found mildly limited cervical spine range of motion consistent with his surgery, Petitioner also had reduced grip strength on the right compared to left, and some decreased sensation to pinprick along volar aspect of Right thumb and radial aspect of the right index finger.

Petitioner testified that he is able to perform his job but notices more difficulty now while lifting things over his head, reduced strength in his dominant right arm, and that he has to watch what he does now. Additionally, there is decreased right hand grip strength and continued numbness in his right thumb, pointer finger, and arm. Petitioner's testimony at trial is uncontroverted, and the Commission should find Petitioner to be credible given the consistency of his testimony with his contemporaneous reports of symptomatology made to both his treating physician, Dr. Fonn, and Respondent's Section 8.1b physician, Dr. Petkovich. Thus, there is credible evidence of some ongoing disability which is corroborated by the treating medical records and should be assigned significant weight.

14IWCC0089

Based on the record as a whole and in consideration of the factors enumerated in Section 8.1b which requires a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency, I would find that Petitioner sustained permanent partial disability to the extent of 17.5% loss of use of the person as a whole pursuant to Section 8(d) (2) of the Act.



Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0089
Case# 11WC044162

WHITLEY, JEFF
Employee/Petitioner

THE CITY OF DuQUOIN
Employer/Respondent

On 5/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2138 LAW OFFICE OF BRIAN K ZIRKELBACH
1100 WALNUT
PO BOX 687
MURPHYSBORO, IL 62966

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)(18))
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0089

Case # 11 WC 44162

Consolidated cases: none

Jeff Whitley
Employee/Petitioner

v.

City of DuQuoin
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **April 16, 2013**. By stipulation, the parties agree:

On the date of accident, **October 13, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$53,093.88**, and the average weekly wage was **\$1,021.04**.

At the time of injury, Petitioner was **40** years of age, *single* with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$19,290.41** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$19,290.41**.

14IWCC0089

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **\$612.62** per week for **125** weeks, because the injuries sustained caused 25% loss of use of petitioner's body as a whole as provided in Section **8(d)(2)** of the Act.

Respondent shall pay Petitioner compensation that has accrued from July 18, 2012 (MMI) through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator


Date

MAY 16 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFF WHITLEY,

Petitioner,

vs.

THE CITY OF DUQUOIN,

Respondent.

14IWCC0089

No. 11 WC 44162

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner is a water and sewer department supervisor for the respondent. As part of his job, he helps repair water main leaks and landscaping. He injured his cervical spine on October 13, 2011, when a backhoe he was driving got stuck in mud, causing him to strike his head on the top of the cab. Accident was not disputed.

The petitioner testified that after the accident he experienced progressive pain from his neck into his right arm. An MRI of the cervical spine found a right-side disc herniation at C5-6 with nerve compression. PX1. The petitioner saw a neurosurgeon, Dr. Fonn. See generally PX2. After epidural injections were not successful in relieving the symptoms, Dr. Fonn performed C5-6 cervical fusion surgery on January 6, 2012.

The petitioner underwent postoperative physical therapy. On July 3, 2012, a functional capacity evaluation found the petitioner able to perform medium to heavy work, consistent with his usual occupation. PX3. On July 18, 2012, Dr. Fonn released the petitioner to return to work per the FCE and placed him at MMI. PX2.

The respondent secured an AMA ratings report from Dr. Petkovich, an orthopedic surgeon, on November 8, 2012. See generally RX1. Following examination, Dr. Petkovich assessed the claimant with an AMA impairment rating of 9%.

The parties agreed that medical bills and temporary disability benefits had been paid. The petitioner testified that he was off work following the accident until May 20, 2012, when he returned to work. At the time of trial, he had resumed work in his pre-injury job capacity. He described some subjective limits due to perceived weakness in his right arm, but acknowledged that he was performing his regular job duties without changes to the job requirements.

OPINION AND ORDER

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes as follows:

(a) Dr. Petkovich assessed the claimant's level of impairment as 9% pursuant to the AMA guidelines of permanent impairment;

(b) The petitioner works as a supervisor in the water and sewer department. This is the same job he held before the injury;

(c) The petitioner was 40 years old at the time of the injury;

(d) The petitioner has returned to his preinjury occupation and there was no evidence presented indicating loss of earning capacity;

(e) The petitioner sustained a C5-6 disc herniation which was addressed via cervical spine fusion at C5-6.

The petitioner's work-related accident resulted in cervical spine fusion surgery; following physical therapy and rehabilitation, he returned to his regular job duties. Considering the enumerated factors and the evidence submitted, the arbitrator finds that as the petitioner has reached maximum medical improvement, the respondent shall pay the petitioner the sum of \$612.62/week for a further period of 125 weeks, as provided in Section 8(d)2 of the Act, as the injuries sustained caused permanent loss to the petitioner's whole body to the extent of 25% thereof.

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
	<input type="checkbox"/> PTD/Fatal denied
<input checked="" type="checkbox"/> Modify up	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Michael Malcolm,

Petitioner,

14IWCC0090

vs.

NO: 11 WC 20668

Pickneyville Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical care, temporary total disability benefits, and permanency, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

After a complete review of the record, the Commission finds that while Petitioner's left knee condition was not caused by the August 25, 2010 accident, it was aggravated by the work accident to the point where Petitioner required surgical treatment. The Commission notes that the record indicates that Petitioner did not suffer from any left knee pain or problems prior to August 25, 2010. The Commission further notes that Petitioner's history of the accident has been consistent throughout, as have been his complaints of ongoing left knee pain following the August 25, 2010 accident. (PX2,PX4,RX6) The February 14, 2011 left knee MRI, taken after Petitioner came under the care of Dr. Freehill, showed moderate diffuse patellofemoral chondromalacia with mild contusion or inflammation of the adjacent Hoffa's fat pad, mild semimembranosus tendinosis with a 9mm soft tissue ganglion at its tibial insertion, and minimal Baker's cyst. (PX5) The Commission finds that while these findings are degenerative in nature, as noted by Respondent's Section 12 examiner, Dr. Kostman (RX6), they were clearly asymptomatic until the August 25, 2010 accident.

During her November 29, 2011, evidence deposition, Dr. Freehill explained that “[r]ecalcitrant femoral pain that does not get better after extensive treatment I think is, you know, indicates that you should do surgery. My thinking is that his causation occurred from his injury. I have no knowledge of prior antecedent knee pain before his injury. So my thought would be he had this twisting injury and a fall causing him to have knee pain.” (PX8-pg.16) Dr. Freehill then corrected part of her testimony by acknowledging that the accident did not involve a fall and still found the work accident to be the basis for Petitioner’s need for surgery. (PX8-pg.17) At her August 21, 2012 evidence deposition, Dr. Freehill explained, in more detail, why Petitioner’s condition is causally related to the August 25, 2011 accident: “the injury that he sustained did not cause the medial plica. Medial plica is something that occurs. It’s an anatomic variable, and it is not caused by trauma, but pain in the knee is more subjective, and he had no prior pain. He described an injury that occurred, and then he developed this pain syndrome. I think there’s certainly evidence on his trochlea, which is the femoral side, where there was injury or damage there. I can’t tell, again, if this is degenerative or if it’s actually traumatically related, but I can say, based on the medical certainty, that he had damage that was consistent with his symptoms. He had symptoms that occurred after the injury. So, based on my experience, the injury probably caused the symptoms.” (PX9-pg.11-12) On cross-examination, Dr. Freehill testified that she was not attributing Petitioner’s chondromalacia to the August 25, 2010 accident, but was attributing Petitioner’s symptomatology from the chondromalacia and knee pain “that’s unremitting” to the accident “based on his injury.” (PX9-pg.19)

The Commission notes that all three doctors involved in this case (Dr. Chow, Dr. Freehill, and Dr. Kostman) agree that Petitioner’s left knee condition pre-existed the August 25, 2010 accident. As noted above, the left knee MRI shows degenerative changes in the left knee. However, the Commission notes that the record supports Dr. Freehill’s finding that the accident caused the pre-existing condition to become symptomatic. As previously noted, Petitioner did not suffer from any left knee problems prior to August 25, 2010. Following the accident, Petitioner continued to have left knee pain and did not receive substantial relief from that pain until he underwent left knee surgery on January 9, 2012. (PX1,PX7,T.18-19) The Commission does not feel that Petitioner’s ability to continue working full duty, as well as hunt, following the August 25, 2010 accident indicates that Petitioner did not continue to have left knee pain following the work accident. The Commission also notes that while Petitioner testified that he still has occasional left knee pain, he also testified that his current occasional pain does not compare to the pain he had following the August 25, 2011 accident and prior to his January 9, 2012 surgery. (T.18-19) Therefore, based on the overall record, the Commission finds that Petitioner has established that his left knee condition following the August 25, 2011 accident and the need for surgery are causally related to the August 25, 2010 work accident.

Based on the above finding, the Commission finds that Petitioner is entitled to payment of his outstanding medical bills for treatment of his left knee, totaling \$20,961.96. The Commission further finds that Petitioner was temporarily totally disabled from January 9, 2012 through January 17, 2012. However, based on Section 8(b) of the Act, payment of temporary total disability benefits shall begin on the fourth day of such temporary total incapacity when the period of temporary total disability exceeds three day, but does not surpass thirteen days. Therefore, the Commission finds that Petitioner is entitled to temporary total disability benefits for 6/7 week, from January 12, 2012 through January 17, 2012.

14IWCC0090

Regarding permanency, the Commission notes that Petitioner has had an excellent recovery from surgery and that he has returned to work, full duty. The Commission further notes that Petitioner testified that his left knee now bothers him only "once in a while." (T.19) Based on the totality of the evidence, the Commission finds that Petitioner has established a loss of 10% loss of use of the left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 13, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$933.87, in temporary total disability benefits, from January 9, 2012 through January 17, 2012, less the three day waiting period, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$20,961.96 for medical expenses under Sections 8(a) and 8.2 of the Act.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$669.64 per week for a period of 21.5 weeks, as provided in Section 8(e)(12) of the Act, for the reason that the injuries sustained caused the 10% loss of use of the left leg.

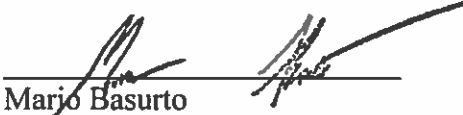
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: FEB 10 2014
DRD/ell
o-01/23/14
68


Daniel R. Donohoo


David L. Gore


Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

CORRECTED

14IWCC0090

MALCOLM, DONALD MICHAEL

Case# 11WC020668

Employee/Petitioner

PINCKNEYVILLE CORRECTIONAL CENTER

Employer/Respondent

On 2/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC	0502 ST EMPLOYMENT RETIREMENT SYSTEMS
TODD J SCHROADER	2101 S VETERANS PARKWAY*
3673 HWY 111 PO BOX 488	PO BOX 19255
GRANITE CITY, IL 62040	SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

FEB 13 2013




KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Williamson

14IWCC0090

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Donald Michael Malcolm

Employee/Petitioner

v.

Pinckneyville Correctional Center

Employer/Respondent

Case # **11 WC 20668**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **November 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

On **August 25, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$84,982.00**; the average weekly wage was **\$1,634.27**.

On the date of accident, Petitioner was **49** years of age, *single* with **2** dependent children.

Respondent is entitled to a credit for all payments made by group under Section 8(j) of the Act.

ORDER

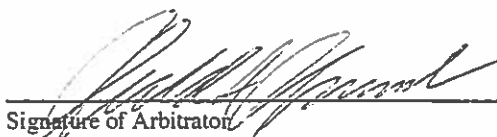
Petitioner sustained a left knee strain from the accident of August 25, 2010. As such, Petitioner is entitled to 5% loss of use of the left leg under Section 8(e) of the Act.

Respondent shall pay Petitioner the sum of **\$669.64/week** for a further period of **10.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused: **5% loss of use of the left leg**.

Respondent shall pay for reasonable and necessary medical bills as outlined in Petitioner's Exhibit #11 from the date of accident to April 12, 2011. The medical bills incurred after April 12, 2011, are found not related to the accident of August 25, 2010. Respondent shall receive a credit for all medical bills previously paid, including any bills paid by group health. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. The dates of service after April 12, 2011, are found not related.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

2/15/13

Date

14IWCC0090

Findings of Fact

Petitioner is a 49 year-old correctional major at Pinckneyville Correctional Center. Petitioner alleged a date of accident of August 25, 2010, for injuries sustained to his left knee as a result of escorting a combative inmate to segregation. The case proceeded to hearing on all issues before Arbitrator Gerald Granada on November 19, 2012. The issues at trial were causation, medical bills, temporary total disability benefits, and nature and extent.

On September 2, 2010, Petitioner was seen at Dr. Chow's office. Petitioner stated that both ECTR's had been successful. The tingling and numb sensation had gone away. Petitioner was fully recovered. He had nice strength without difficulty. Petitioner was released from the office. Petitioner was to return only when needed.

On September 9, 2010, Petitioner presented to Dr. James Chow at James Chow, M.D., LTD d/b/a Orthopaedic Center of Southern Illinois for an orthopedic evaluation regarding the left knee. Petitioner reported that he injured himself while on duty on August 25, 2010. Petitioner reported that he wrestled an inmate back into the cell. The hands were cuffed, and inmate was resistant, so Petitioner had to force him to go into the cell. After that, Petitioner reported he experienced pain in the left knee joint. Petitioner reported that the pain persisted for the last two weeks. Petitioner reported that he had a right ACL injury two years ago after falling out of a tree. He did not have surgery. Petitioner reported that the left knee never had any problems in the past. Petitioner had no tenderness in the joint line. Petitioner pointed towards the medial side of the patella. Forcing the knee joint to full extension did not create pain. McMurray's examination was negative. Lachman's sign, pivot test, reversed pivot test were negative. Pressing the patella against the femoral condyle did not create crepitation or pain. Petitioner reported that he had an ACL injury in the right knee that Dr. Freehill had previously evaluated and suggested surgery, and Petitioner decided to go without the surgery. Dr. Chow noted that following the examination for the left knee joint, his concern was soft tissue injury. There was no joint instability and no signs of internal derangement of the knee joint. Dr. Chow recommended time to see how it goes. Petitioner continued to work full duty, and Dr. Chow believed he could continue his work. Petitioner was to follow-up in three weeks.

On September 25, 2010, Petitioner returned to Dr. Chow. Petitioner reported that the pain in his left knee was still present at the superior medial corner of the medial femoral condyle. Range of motion was quite free. The swelling had gone down. Petitioner had pain in the superior medial corner of the medial side of the patella at the medial femoral condyle. There was a little crepitation able to be palpated with pain. After the examination, it was believed that Petitioner may have right now been suffering from plica issues in the left knee. Conservative treatment was recommended.

On October 6, 2010, Petitioner presented to Physical Rehabilitation Center for physical therapy of his left knee.

On October 14, 2010, Petitioner returned to Dr. Chow. Petitioner reported that he had pain down the left knee. Dr. Chow believed it was plica pain. Dr. Chow noted that this was getting somewhat better. Movement of the knee joint was quite free. The swelling had gone down. Petitioner was able to ambulate. Petitioner was to return in one month for follow-up. Petitioner told Dr. Chow that he had been climbing trees. Dr. Chow noted that no wonder the knee was irritated a little bit. Dr. Chow told Petitioner to lighten up his activities.

On November 16, 2010, Petitioner returned to Dr. Chow. His left knee pain continued. Dr. Chow noted that this was like plica syndrome at the anteriomedial side of the left knee. Dr. Chow noted that he was able to palpate the plica and this bothered Petitioner. Petitioner was given anti-inflammatory medication.

On February 1, 2011, Petitioner presented to Dr. Angela Freehill for a chief complaint of left knee pain. Petitioner reported that he was wrestling an inmate back into his cell on August 25, 2010, when he sustained injuries to his left knee. Petitioner reported that he experienced pain to his left knee. He saw Dr. Chow who recommended conservative management. Petitioner reported that his knee was not getting better. He was still having pain at the anterior medial aspect of the kneecap. He had no pain posteriorly. He had no instability. Petitioner had no effusion in the knee. He exhibited full extension and flexion to 120 degrees. Petitioner had tenderness to the medial facet to the patella. He had a medial patellofemoral ligament that was sore. Dr. Freehill could palpate a reproducible popping sensation in the knee. X-rays obtained in September were reviewed which showed no evidence of arthritis. He did have irregularity of the patellofemoral joint specifically on the sunrise view. Dr. Freehill's impression was that Petitioner had either medial plica syndrome or possibly medial meniscus changes. Dr. Freehill recommended a MRI of the knee.

On February 14, 2011, Petitioner underwent a MRI of the left knee which revealed the following: 1) moderate diffuse patellofemoral chondromalacia with mild contusion or inflammation of the adjacent Hoffa's fat pad; 2) mild semimembranosus tendinosis with a 9 mm soft tissue ganglion at its tibial insertion; and 3) minimal Baker's cyst.

On March 1, 2011, Petitioner returned to Dr. Freehill for follow-up for his left knee. Examination reviewed a small effusion in the knee. He was tender right at the medial facet of the patella and medial plica region. Dr. Freehill reviewed the MRI which revealed no evidence of meniscus tear. Petitioner had some inflammation of Hoffa fat pad as well as the medial patellofemoral ligament right at the insertion at the medial facet of the patella. Petitioner was given a cortisone injection. Dr. Freehill's impression was left knee medial plica syndrome and inflammation. Petitioner was started on Naprosyn. Petitioner was started physical therapy. He was to return in six weeks for a clinical check. Petitioner was to continue working normal duty at work.

On March 8, 2011, Petitioner presented to physical therapy for a chief complaint of left knee pain, mostly in the medial patella region. Petitioner reported minimal swelling to the knee and 0/10 pain at rest with occasional sharp popping in the knee/calf area rated 5/10. Petitioner reported pain was worse with standing after prolonged sitting and ascending and descending stairs. Observation of the left knee revealed no swelling.

On March 10, 2011, Petitioner presented to physical therapy and reported no pain for his left knee.

On March 15, 2011, Petitioner presented to physical therapy. He reported some increasing pain yesterday with his left knee. He reported that he did a lot of yard work on Sunday, bending over to do the work. Petitioner reported that he also went fishing that day and while he was walking, he tripped and fell. He rated his left knee pain as a 3/10 on the pain scale.

On March 22, 2011, Petitioner reported to the physical therapist that he was having increased pain with prolonged sitting, reaching 2-3/10.

On April 12, 2011, Petitioner returned to Dr. Freehill. Petitioner reported that the injection made him pain free for about a week. Petitioner reported that his knee pain had recurred. He reported pain at the anteromedial aspect of the knee. It bothered him when he has his knee bent for long periods of time. It does not bother him at nighttime. Petitioner wanted to do the most aggressive thing to try and get rid of his pain. Examination revealed small effusion in the knee and tenderness at the medial facet of the patella as well as the medial plica region. Petitioner was assessed with left knee medial plica syndrome and patellofemoral pain which was

unresponsive to conservative management. Dr. Freehill noted that at that point, the only more aggressive option remaining was surgical arthroscopy with plica excision and debridement of the knee patellofemoral lesions. Dr. Freehill noted that they would submit the surgical request to workers' compensation.

On July 13, 2011, Petitioner was seen by Dr. W. Chris Kostman for an independent medical examination for his left knee. Petitioner reported that he may favor his left knee due to his prior right knee injury from 2008 which resulted in an ACL tear after falling from setting up a tree stand. Dr. Kostman diagnosed Petitioner with a left knee strain following a twisting injury. Dr. Kostman opined that Petitioner's current knee condition was related to his underlying patellofemoral degenerative arthritis and chondromalacia and to a lesser degree the medial joint line degenerative change. Petitioner reported that he continued to climb trees, both with a tree climbing pole as he described to assist him in climbing trees and also up ladders for deer hunting as recently as November of last year. He reported no difficulty when climbing for his recreational activities. Dr. Kostman believed treatment could be directed to Petitioner's underlying degenerative arthritis. Dr. Kostman opined that there was no evidence of a patellofemoral plica, and he did not believe Petitioner's findings were consistent with patellofemoral plica. Dr. Kostman did not recommend any further treatment from the August 25, 2010, incident. Dr. Kostman placed Petitioner at maximum medical improvement with respect to the incident of August 25, 2010.

On November 29, 2011, Petitioner returned to Dr. Freehill. Petitioner wanted to proceed with surgery under his own insurance.

On December 20, 2011, Petitioner returned to Dr. Freehill with left knee pain. He had left knee medial plica as well as medial meniscus pain. Surgery was denied by workers' compensation, and Petitioner wanted to proceed with surgery through his own insurance. Dr. Freehill recommended a surgical arthroscopy, partial medial meniscectomy as well as possible medial plica excision. Petitioner was to return one week after surgery.

On January 9, 2012, Dr. Freehill performed surgery on Petitioner's left knee at Good Samaritan Regional Health Center. The operation was a left knee arthroscopy, left knee arthroscopic medial plica excision and left knee arthroscopic trochlear groove chondroplasty. The post-operative diagnoses included a large fibrous band-like medial plica; Grade 3 chondromalacia of the trochlea and Grade 1 chondromalacia of the patella. There was no evidence of medial meniscus tear.

On January 17, 2012, Petitioner returned to Dr. Freehill. He was one week status post left knee arthroscopy and arthroscopic medial plica excision and trochlear groove chondroplasty. He was doing well. He was not having any great deal of difficulty. Dr. Freehill noted that Petitioner had Grade IV chondromalacia of the trochlea. Petitioner was to return in one month for a clinical check. Physical therapy was ordered. Petitioner was returned to regular duty as of January 18, 2012.

On January 18, 2012, Petitioner underwent a duplex Doppler venous ultrasound of the left lower extremity for left lower extremity swelling. The testing was unremarkable for deep venous thrombosis.

On February 17, 2012, Petitioner returned to Dr. Freehill five weeks status post surgery to his left knee. He was doing well. He was having no pain. Petitioner had been doing some remodeling of his house and having not as much difficulty with that either. Petitioner was to continue on home exercise program. He was doing really well. Petitioner was to do activities as tolerated. He was to return on a p.r.n. basis.

On March 7, 2012, Dr. Kostman's deposition was taken. Dr. Kostman noted that the September 9, 2010, note from Dr. Chow did not revealed anything on physical exam findings to reveal a plica syndrome. Specifically, Dr. Kostman testified that Dr. Chow's note did not note patellofemoral pain on exam. Dr. Kostman noted that x-rays were taken at his office which revealed degenerative change to the patellofemoral joint.

On May 23, 2012, Dr. Kostman reviewed additional medical records from Dr. Freehill, including the operative report of January 9, 2012. Dr. Kostman opined that after reviewing the additional medical records, he did not believe the need for surgery was related to the claim of August 25, 2010. Dr. Kostman noted that the findings during arthroscopy of 1/9/12 included medial plica and chondromalacia of the trochlea groove, which he believed were unrelated to the incident of August 25, 2010. Dr. Kostman did not believe that Petitioner's exam findings were consistent with or his imaging studies were consistent with patellofemoral plica. Therefore, he did not agree with Dr. Freehill's surgical recommendation.

Petitioner continued to work following the August 25, 2010, incident. He only missed nine days of work following the surgery in January 2012.

Therefore, the Arbitrator concludes the following:

1. Petitioner's left knee strain is related to the incident on August 25, 2010. As such, Petitioner is entitled to 5% loss of use of the left leg under Section 8(e) of the Act. Petitioner's plica syndrome and chondromalacia are not related to the August 25, 2010, incident at work. The surgery performed by Dr. Freehill is not related to the August 25, 2010, incident at work. The Arbitrator found the medical records from Dr. Chow and the opinions of Dr. Kostman persuasive in this regard.
2. Respondent shall pay for reasonable and necessary medical bills as outlined in Petitioner's Exhibit #11 from the date of accident to April 12, 2011. The medical bills incurred after April 12, 2011, are found not related to the accident of August 25, 2010. Respondent shall receive a credit for all medical bills previously paid, including any bills paid by group health. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. The dates of service after April 12, 2011, are found not related.